

AMERICAN ARBITRATION ASSOCIATION

CASE NO: 010129-05322-6

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THE CITY OF NEW PHILADELPHIA )  
 )  
 Employee, )  
 )  
 and )  
 )  
 FRATERNAL ORDER OF )  
 POLICE/OHIO LABOR COUNCIL, )  
 )  
 Employer. )

**COPY**

ARBITRATOR:  
 MR. MCINTOSH

- - - - -

BE IT REMEMBERED, that upon the Arbitration  
 of the above-entitled matter, held at the New  
 Philadelphia Police Department, New  
 Philadelphia, Ohio, before Mr. McIntosh,  
 Arbitrator, and commencing on Thursday, the  
 3rd day of May, 2001, at 10:00 a.m., at which  
 time the following proceedings were had.

- - - - -

APPEARANCES:

On behalf of The City of New Philadelphia:

ROBERT J. TSCHOLL, ATTORNEY AT LAW  
740 UNITED BANK BUILDING  
220 MARKET AVENUE SOUTH  
CANTON, OHIO 44702-2181

(330) 456-7702

On behalf of the Fraternal Order of  
Labor Council:

MICHAEL PIOTROWSKI, ATTORNEY AT LAW  
FRATERNAL ORDER OF POLICE NE OFFICE  
2721 MANCHESTER ROAD  
AKRON, OHIO 44319

(330) 753-7080

ALSO PRESENT: Officer William Stewart  
Jim Boomer

- - - - -

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>
Mayor Ronald Brodzinski	26	31	
David Cimperman	132	62	
Rocky Dusenberry	136	147	
Wendy Jones	157	166	
Kenny Howell	174	208	235
Captain Richard Calderon	236	271	

<u>Exhibits</u>	<u>Page</u>
Joint A     Collective Bargaining Agreement	4
Joint B     Four pages with grievance	4
City C      Witness packet	4
Joint D      Copy of canceled check	4
Union E      Parcel shipping order	296

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1 (Joint Exhibits A and B and D were  
2 marked for identification.)

3 (City's Exhibit C was  
4 marked for identification.)

5 THE ARBITRATOR: Prior to going on  
6 the record, the parties have entered into some  
7 stipulations, the Collective Bargaining  
8 Agreement shall be Joint Exhibit A and a  
9 packet of four pages including the grievance,  
10 will be Joint B.

11 The parties have also stipulated that  
12 all prerequisites of the arbitration have been  
13 satisfied and that the matter is properly  
14 before me as the Arbitrator for decision.

15 The parties wish the witnesses to be  
16 sworn and have requested a separation of  
17 witnesses.

18 Off the record.

19 (Discussion held off record.)

20 THE ARBITRATOR: Consistent with the  
21 separation of witnesses, the Grievant and a  
22 Union representative will be present during  
23 the entire hearing. The City will designate  
24 its representative.

25 Who will remain here during the



1 hearing?

2 MR. TSCHOLL: Chief Staggers.

3 THE ARBITRATOR: And the parties are  
4 permitted to have additional observers. I  
5 caution the parties that if they expect that  
6 witness to testify or think that that witness  
7 may testify, that that witness will be  
8 precluded from being called as a witness by  
9 virtue of his presence during the process.

10 MR. PIOTROWSKI: I'd like to keep  
11 Officer William Stewart, he's our local  
12 representative for the Union.

13 THE ARBITRATOR: Okay. You don't  
14 have him listed as one of your witnesses, so  
15 he'd be entitled to stay as an observer.

16 MR. PIOTROWSKI: Right. I'm going to  
17 keep Jim Boomer here as the Union  
18 representative, the Grievant himself, and then  
19 Officer Stewart will be here, but I understand  
20 that as by staying, he excludes himself from  
21 the possible witness pool.

22 THE ARBITRATOR: That's fine.

23 I think all preliminaries are taken  
24 care of.

25 Mr. Tscholl, will you care to make an

1 opening statement?

2 MR. TSCHOLL: I would, Mr.  
3 McIntosh. On behalf of the City of New  
4 Philadelphia, my name is Robert J. Tscholl and  
5 I'm representing the City of New Philadelphia  
6 in this arbitration matter.

7 The City will, through the testimony  
8 and evidence, establish the following: On or  
9 about August the 4, 2000, Mr. Cimperman was  
10 advised by the Safety Director, Rick Popham  
11 and the Police Chief, Thomas Staggers, that he  
12 was being placed on administrative leave  
13 pending investigation of two matters.

14 The first concerned a citizen by the  
15 name of Lola Arrendondo, in which the Grievant  
16 was involved in failing to pay her court fines  
17 that were tendered to the Grievant on Ms.  
18 Arrendondo's behalf, which resulted in a  
19 motion to revoke her probation being filed.

20 Secondly, the Grievant was being  
21 placed on administrative leave, again, on  
22 August the 4th, pending investigation into his  
23 Internet transactions whereby his  
24 representations on the Internet that he was a  
25 member of the City of New Philadelphia Police

1 Department in using that representation in  
2 these Internet transactions.

3 Prior to 8/4/00 there was also an  
4 investigation being conducted by Captain Rich  
5 Calderon, involving Mr. Cimperman's  
6 modification of City equipment namely: The  
7 mobile radios, which are the City radios in  
8 the police cruisers and the portable radios,  
9 which the police officers carry on their  
10 person.

11 As a result of the investigations  
12 that were being conducted, the City on August  
13 28, 2000, advised Mr. Cimperman's lawyer,  
14 whose name is --

15 MR. PIOTROWSKI: Hinig.

16 MR. TSCHOLL: Hinig, H-i-n-i-g,  
17 that a pretermination, predeprivation hearing  
18 will be scheduled on August 31, 2000 at 2 p.m.  
19 regarding charges against Mr. Cimperman  
20 involved in the Lola Arrendondo matter.

21 THE ARBITRATOR: Do you want to spell  
22 Arrendondo for the court reporter?

23 MR. TSCHOLL: Sure. "Arrendondo"  
24 is, A-r-r-e-n-d-o-n-d-o. First name Lola,  
25 L-o-l-a.

1                   Secondly, the charges involved Mr.  
2                   Cimperman's representation to Safety Director  
3                   Popham and Chief Staggers, that he was not  
4                   using his position in the New Philadelphia  
5                   Police Department for Internet transactions.

6                   Thirdly, Mr. Cimperman was charged  
7                   with modifying and reprogramming City  
8                   equipment in violation of the City rules and  
9                   regulations.

10                  Fourthly, Mr. Cimperman was charged  
11                  with a possible criminal violation under  
12                  RC2913.04.

13                  This letter, along with documents,  
14                  was given to Attorney Hinig on or about August  
15                  the 28, 2000.

16                  On August the 31, 2000, the  
17                  predeprivation hearing, which was being  
18                  conducted pursuant to Article 17 Section 3 of  
19                  the Collective Bargaining Agreement was  
20                  conducted.

21                  Present for Mr. Cimperman at this  
22                  hearing were Charles Wilson, the FOP Rep, and  
23                  Richard Hinig, the attorney that Mr. Cimperman  
24                  retained to represent him.

25                  Present for the City was the Police

1 Chief, Thomas Staggers, the Safety Director,  
2 Gregg Popham, and myself, Robert J. Tscholl as  
3 the City Attorney.

4 At that time, the City reviewed the  
5 charges and, also pursuant to 17.3 of the  
6 Collective Bargaining Agreement, afforded Mr.  
7 Cimperman the opportunity to respond to those  
8 charges or to make other inquiries regarding  
9 charges.

10 Mr. Cimperman advised the City that  
11 he was making no response to the charges. The  
12 same date, August 31, 2000, Mr. Popham wrote  
13 Mr. Cimperman a letter advising him that he  
14 was being terminated from the City of New  
15 Philadelphia Police Department as a result of  
16 Mr. Popham finding that there was a good basis  
17 to believe that Mr. Cimperman violated the  
18 police rules and regulations that pertained to  
19 the matters that I've previously mentioned.

20 On September the 8th of 2000, the  
21 City received a letter from Catherine Brochman  
22 of the FOP advising the City that the FOP was  
23 going to arbitrate the Cimperman grievance,  
24 although the Cimperman grievance was not filed  
25 until September the 11th of 2000, three days

1 after the dated letter from the FOP, advising  
2 the City that the Union was going to arbitrate  
3 the grievance.

4 The grievance itself alleges  
5 violations of Section 17.1 and 17.5 of the  
6 Collective Bargaining Agreement. 17.1  
7 requires the City to have just cause for  
8 terminating an employee -- a police officer.  
9 17.5 states that the City will use progressive  
10 discipline when it is appropriate to do so.

11 The evidence will show that the City  
12 does not use progressive discipline when major  
13 violations of its rules and regulations are  
14 found and, in this case, the charges against  
15 Mr. Cimperman involved major violations of the  
16 rules and regulations.

17 The grievance itself, there was a  
18 Step 2 meeting on September the 18th between  
19 the Safety Director and the Union. At that  
20 time the grievance was denied.

21 Under the Collective Bargaining  
22 Agreement a grievance involving discharge may  
23 be initiated or shall be initiated at Step 2.

24 The grievance was processed to Step 3  
25 on September the 22nd of 2000. There was a

1 telephone conversation between Chuck Shod, the  
2 FOP Rep, and Mayor Brodzinski, whereby it was  
3 agreed that the grievance would be  
4 automatically processed to arbitration.

5 The Arbitrator was selected pursuant  
6 to the arbitration, which is to get a list  
7 from the FMCS, and the parties scheduled this  
8 arbitration and that concludes my Opening  
9 Statement.

10 THE ARBITRATOR: Thank you.

11 Mr. Piotrowski, do you wish to make  
12 an Opening Statement at this time or wait  
13 until we conclude.

14 MR. PIOTROWSKI: I would like to open  
15 at this point. Thank you.

16 That all sounds like a lot and we've  
17 stipulated that the matter is properly before  
18 the Arbitrator. We've stipulated to the  
19 question presented, so I'm going to ignore the  
20 paper trail and the grievance and I'm going to  
21 ignore all of the grievance handling. But I'm  
22 not going to ignore the witch hunt that took  
23 place to get us here to begin with.

24 Dave Cimperman - who at the time of  
25 his termination was a Captain - was not and is

1 not well-liked within this department. The  
2 investigating officer, Calderon, didn't like  
3 Captain Cimperman.

4 The patrolman who undertook an  
5 unauthorized investigation of Captain  
6 Cimperman, doesn't like Captain Cimperman.  
7 And a number of the people in his own  
8 bargaining union, don't like Captain  
9 Cimperman.

10 That notwithstanding, he's entitled  
11 to all the benefits to the contract and he's  
12 entitled to fair treatment by the management  
13 here. So when somebody within the department  
14 morphed his face onto a picture of a naked  
15 black man and passed it around the department,  
16 he complained.

17 And as a result of that complaint,  
18 Captain Calderon did an investigation. And  
19 Officer Cimperman - who was an officer at that  
20 time and this was last May - complained that  
21 Captain Calderon was involved in this matter.  
22 He had been one of the people to see the photo  
23 and had not done anything to stop it from  
24 being passed around.

25 The Chief overruled Officer



1 Cimperman's objection to Calderon doing the  
2 investigation. And Calderon continued the  
3 investigation.

4 So, what we have is Cimperman  
5 complaining about a number, probably seven to  
6 ten, other officers who had been passing  
7 around this picture that was highly offensive  
8 and embarrassing to him.

9 What result do we have? The officers  
10 involved in creating the picture were given  
11 discipline. Strangely enough, Officer  
12 Cimperman was given discipline along with  
13 that.

14 Officer Cimperman was punished for  
15 complaining to the wrong people. Captain  
16 Calderon felt it had to follow the chain of  
17 command, even though Captain Calderon was  
18 involved in the incident that created the  
19 complaint.

20 And, the second incident was the  
21 picture of Dave Cimperman that had been  
22 morphed onto the picture of the black man,  
23 which had been found on the computers at work;  
24 therefore, he had misused departmental  
25 equipment.

1           It didn't matter that everybody else  
2           had misused departmental equipment in the same  
3           fashion, or that there was no end result of  
4           having a digital picture of Officer Cimperman  
5           on the system. He was disciplined for misuse  
6           of equipment.

7           With that background, Officer  
8           Cimperman won the competition to become the  
9           next captain. And at the beginning of July or  
10          the end of June of 2000, he was promoted.

11          Then the trouble started. Captain  
12          Calderon felt that Officer Cimperman was not  
13          the proper type of person to be a captain.  
14          Officer Hootman felt that Captain Cimperman  
15          shouldn't be a captain. Officer Hootman was  
16          on his shift. So on July 5th when Mr. Ayers  
17          called and said, "You guys have somebody in  
18          your town who is a fraud. I bought some radio  
19          equipment from a guy named Dave Cimperman."  
20          Now, recognize, he said, "A guy named Dave  
21          Cimperman." Not, "One of your police  
22          officers," because this is important. "This  
23          guy Cimperman sold me this stuff for \$500. I  
24          sent a check and he hadn't sent it to me yet."

25          Now, the check had been delivered on

1 June 13th, so about two weeks had passed at  
2 this point in time, and Mr. Ayers was  
3 beginning to stress out that he had been  
4 ripped off.

5 Hootman sat on this information for a  
6 while and decided to begin a personal  
7 investigation. So one day from his home, he  
8 called Mr. Ayers and do you know what Mr.  
9 Ayers told him? "I got my stuff. He wasn't  
10 ripping me off."

11 But when Hootman reported this to the  
12 Police Department, they decided to initiate an  
13 investigation. Notwithstanding the fact that  
14 the deal had been made and everybody had been  
15 paid and the goods had been delivered, and  
16 there was still no evidence that Officer  
17 Cimperman had ever used his position as a  
18 police officer to facilitate radio sales over  
19 the Internet.

20 Also, arising on or about this time,  
21 was an issue regarding one Lola Arrendondo.  
22 Ms. Arrendondo had been convicted of  
23 shoplifting. She's approximately 18-years-old  
24 and was a family friend of Officer Cimperman.

25 Ms. Arrendondo sent Officer Cimperman

1 a check to pay her fines from a bank in Texas  
2 written on her father's bank account.

3 Officer Cimperman may be a nice guy,  
4 but he's not completely trusting. He  
5 deposited the check in his bank account and  
6 waited for it to clear, because the check was  
7 made out to Dave Cimperman. It wasn't made  
8 out to the Clerk of Courts. It wasn't made  
9 out to anybody else. It was made out to Dave  
10 Cimperman.

11 His intentions were to pay those  
12 fines once the check had cleared. Sometime  
13 later, almost 30 days, Lola Arrendondo called  
14 up and said, "My mom just got a notice that  
15 they're going to violate my parole. One,  
16 because I got picked up for shoplifting again  
17 and, two, because I haven't paid my fines."  
18 And there's a third reason that I don't recall  
19 at this point in time.

20 And she said, "I sent you the money  
21 for the funds, why haven't you paid them?"  
22 And Dave Cimperman said, "Oh, shit, you're  
23 right. I forgot." And he went and paid the  
24 fines.

25 It doesn't matter. The Police

1 Department decided that was proof of intent to  
2 steal, because they considered that  
3 dishonesty. The lack of any evidence of  
4 intent to steal didn't seem to slow them down  
5 any.

6 That's because we were going to  
7 assume in this investigation, that anything  
8 that could be twisted into a violation, was  
9 going to be twisted into a violation. So  
10 notwithstanding the fact that Mr. Ayers, in  
11 Indianapolis or wherever the hell he's from,  
12 got his stuff. And notwithstanding the fact  
13 that Lola Arrendondo had her fines paid, we  
14 were going to assume that those were  
15 violations.

16 Mr. Tscholl was a little less than  
17 honest about what the August 4th letter  
18 announcing these investigations and putting  
19 Officer Cimperman on administrative leave  
20 said. Because what he was charged with on  
21 August 4th, he was told exactly  
22 this: "Effective this date, you're being put  
23 on paid administrative leave and this letter  
24 will also serve as notice of inquiry per the  
25 current labor contract that an investigation

1 will be conducted concerning your actions with  
2 Lola Arrendondo," which almost resulted in her  
3 probation being revoked. Also, transactions  
4 involving Internet sale of radio equipment  
5 will be looked at.

6 Now, knowing that Mr. Ayers had  
7 called up and complained, and knowing that  
8 Officer Hootman had made a "Federal" case out  
9 of it, we know that that's what the City was  
10 investigating.

11 So the Chief asked Captain  
12 Cimperman, "Have you ever used your position  
13 as a New Philadelphia Police Officer in  
14 transactions involving the Internet sale of  
15 radio equipment?" And Captain Cimperman  
16 said, "No, I have not."

17 And you will see from every Ebay  
18 auction notice and the rest of the  
19 interactions that took place regarding sale of  
20 that equipment that he did, in fact, sell,  
21 that he never identifies himself as a New  
22 Philadelphia Police Officer.

23 Now, where he does identify himself  
24 as a New Philadelphia Police Officer is when  
25 he sends three mobile radios - mobile being

1 mounted in the car versus portable which, are  
2 carried on the belt - to a place called  
3 Brinkley's Electronics, so that they could be  
4 modified for use in neighboring  
5 jurisdictions.

6 Officer Cimperman was doing a favor  
7 for two other police officers and he got these  
8 mobile radios modified so that they could  
9 receive the frequencies needed by  
10 Newcomerstown and Roswell.

11 The Union will call the officers  
12 involved from those two jurisdictions and they  
13 will back this up.

14 Finally, Officer Cimperman,  
15 four-and-a-half years ago, bought his own  
16 portable radio. And Officer Cimperman's own  
17 portable radio has some buttons on it that the  
18 other portable radios don't have.

19 Officer Cimperman carried that radio  
20 on his belt for four-and-a-half years. What  
21 Officer Cimperman's radio did that the other  
22 radios didn't, was scan the various law  
23 enforcement and fire emergency frequencies in  
24 the area so that you can listen to what's  
25 going on around you.

1                   Sending a fire or a rescue squad  
2                   vehicle or sending an ambulance from one of  
3                   the ambulance companies, or if Newcomerstown  
4                   is dispatching cars or the Ohio State Patrol,  
5                   these are transmissions that could be picked  
6                   up with the radio scanning for those  
7                   frequencies.

8                   Now, this didn't affect his radio's  
9                   ability to communicate with the departmental  
10                  frequencies. In fact, it made it easier,  
11                  because in certain situations, you could scan  
12                  while leaving the radio set to your  
13                  departmental frequency, and then you would  
14                  have been able to broadcast on your frequency,  
15                  but hear what was going on elsewhere, versus  
16                  having to switch over to those frequencies and  
17                  broadcasting on them if you forgot you were  
18                  switched over.

19                  At one point Officer Dusenberry, who  
20                  was working with Officer Cimperman said, "My  
21                  radio doesn't do that. How does your radio do  
22                  that?" And Officer Cimperman tells him the  
23                  truth, "They can all do it. It's just a  
24                  matter of getting it programmed right."

25                  And Dusenberry says, "I'd like mine



1 to do it. The Sheriff Department's radios do  
2 it, why don't ours do it?"

3 And Officer Dusenberry gave his radio  
4 to Officer Cimperman and Officer Cimperman had  
5 it modified so it could do the scan and  
6 additional functions known as paging.

7 Paging allows one radio to beep  
8 another radio and on the screen it shows up as  
9 the number of the radio that just beeped you.

10 Once again, this is a function that's  
11 inherent in the Motorola Series radios. When  
12 you buy the radio, you tell the place you're  
13 buying it from, how you want it set up.

14 In order to modify these radios, you  
15 need a number of different items. You need an  
16 interface box. You need some cables running  
17 from your computer to the radio and you need  
18 some software sold by Motorola.

19 And yesterday Motorola offered to  
20 sell me all of those items. They're not  
21 restricted. As long as you buy it from  
22 Motorola, Motorola is fine with it.

23 What the City did here, was twist  
24 this into somehow Dave Cimperman was doing  
25 something so terrible that he deserved to be

1           fired. He was abusing the radio system.

2           They claimed he had programmed in the  
3 functional abilities of a cell phone and that  
4 he had been making phone calls on an untaped  
5 911 line. None of this is true.

6           The radios that he modified were  
7 modified with the page and scanner function  
8 that he had modified. Let me correct that.  
9 The phone patch capability was nothing he had  
10 anything to do with.

11           The City determined that they were  
12 going to not only terminate or discipline  
13 Officer Cimperman, they were going to refer  
14 this to criminal prosecution. They felt that  
15 his adding frequencies to these radios  
16 constituted a violation of the Ohio Revised  
17 Code.

18           Now, in the ten months since this was  
19 found out, if not longer, no charges have  
20 actually been brought against Officer  
21 Cimperman, but we will find out that to this  
22 day, the City threatens criminal prosecution.

23           For that reason, as well as other  
24 reasons, Officer Cimperman could not testify  
25 at his predisciplinary hearing, because he

1 would have been testifying about something for  
2 which they were going to try to prosecute  
3 him.

4 In fact, the letters presented here  
5 will prove that the City continued to push the  
6 prosecution angle after the predisciplinary  
7 hearing.

8 Today my understanding is that a  
9 Grand Jury was impaneled yesterday that may or  
10 may not indict Officer Cimperman on these  
11 charges.

12 For that reason, I don't know yet  
13 whether or not Officer Cimperman will be  
14 taking the stand. I don't know if it will be  
15 necessary and I don't know if the risk benefit  
16 analysis required here can end up in favor of  
17 Captain Cimperman testifying.

18 What I do know is this: Rocky  
19 Dusenberry is still working. Rocky Dusenberry  
20 asked that his radio be modified, took a  
21 modified radio and carried it on his hip. He  
22 did the same thing that Captain Cimperman did,  
23 but he still has his job.

24 The Arrendondo situation is a matter  
25 between two friends which deserved no

1 discipline whatsoever.

2 The Ayers's situation is a matter  
3 between two arm's-length individuals that has  
4 no need for police involvement, and if you  
5 asked any police officer, they would claim  
6 this is clearly a civil matter.

7 And the question of whether or not  
8 Captain Cimperman lied when asked whether he  
9 used his New Philadelphia Police status in  
10 Internet radio sales, was answered honestly.

11 The Chief tried to lay a perjury trap  
12 for Officer Cimperman and he screwed it up.  
13 Officer Cimperman never used his name in his  
14 Ebay transactions or used his position as a  
15 police officer in his Ebay transactions, and  
16 he never tried to take advantage of his  
17 position as a police officer; however, when he  
18 had the radios modified for Newcomerstown and  
19 Roswell, he identified himself as a police  
20 officer, but those radios were never sold to  
21 anybody. This doesn't involve Internet radio  
22 sales. That's what the Chief was asking  
23 about. Now the Chief thinks he has clear  
24 evidence that he was lying.

25 It's funny though, that's the only

1 question the City ever asked of Officer  
2 Cimperman. They could have ordered him to  
3 answer all the questions they wanted. They  
4 can force him to answer questions. U.S.  
5 Supreme Court says they can force him to  
6 answer questions, but the cost of doing that  
7 would have been immunizing him thereby  
8 limiting his testimony to administrative  
9 purposes only. They didn't want to do that,  
10 probably because they wanted to hold this  
11 criminal prosecution over his head to  
12 encourage him to resign, so we wouldn't end up  
13 here today. But a portion of the just cause  
14 requires that a real investigation take place  
15 and, in this case, when you don't even talk to  
16 the individual involved and you make  
17 assumptions and presumptions, you have not  
18 completed a proper investigation.

19 In the absence of a proper  
20 investigation and more evidence of real  
21 wrongdoing here, termination is wildly out of  
22 line. Their own policies will show it, the  
23 evidence will show it and the testimony that  
24 the Union presents will show it.

25 We're asking that the termination be

1 reversed and Officer Cimperman be returned to  
2 work with full back pay.

3 THE ARBITRATOR: The letter which you  
4 were referencing, is that the same as Exhibit  
5 13 in the packet that Mr. Tscholl provided us  
6 with? That was one he mentioned on  
7 August 4th?

8 MR. PIOTROWSKI: Yes.

9 THE ARBITRATOR: Okay. Thank you.

10 Mr. Tscholl, your first witness?

11 MR. TSCHOLL: We will call the  
12 Mayor.

13 (A brief recess was had.)

14 WHEREUPON,

15 MAYOR RONALD B. BRODZINSKI

16 who, being first duly sworn, testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. TSCHOLL:

20 Q. Mayor, state your name for the record,  
21 please.

22 A. Ronald B. Brodzinski.

23 Q. And your current employer?

24 A. City of New Philadelphia as Mayor.

25 Q. And how long have you been the Mayor of New

1 Philadelphia?

2 A. Since January 1st of 2000.

3 Q. And as part of your duties as the Mayor of New  
4 Philadelphia, do you become involved in the  
5 grievance procedure?

6 A. On a normal basis, I'm a Step 3 Hearing  
7 Officer.

8 Q. And are you familiar with the grievance that  
9 was filed on behalf of Mr. Cimperman?

10 A. Yes, I am.

11 Q. And can you tell us how you became familiar?

12 A. The Safety Director told me that there was a  
13 problem regarding Mr. Cimperman and that they  
14 were going to pursue with removal of him. And  
15 then, of course, the grievance was filed  
16 pursuant to removal.

17 Q. I'm handing you what's been marked as Joint  
18 Exhibit 3 and would ask you if you will take a  
19 moment --

20 THE ARBITRATOR: You do not have a  
21 Joint 3.

22 MR. PIOTROWSKI: We have a Joint 2.

23 MR. TSCHOLL: Off the record.

24 (Discussion held off record.)

25 BY MR. TSCHOLL:

1 Q. I'm handing you what's been marked as Joint  
2 Exhibit B. Will you take a moment and review  
3 this document and when you're ready to answer  
4 questions, let me know.

5 A. This is a grievance filed on Mr. Cimperman.

6 Q. And this document consists of how many pages?

7 A. Four pages.

8 Q. The first page of this document, can you  
9 identify that?

10 A. Step 1 or the original grievance?

11 Q. The first page.

12 A. The first page from the Fraternal Order of  
13 Police, just the fact that they are going to  
14 arbitrate the grievance and that they request  
15 a list of arbitrators.

16 Q. And what's the date of this letter, Mayor?

17 A. September 8, 2000.

18 Q. Do you know, had the grievance been filed as  
19 of September 8, 2000?

20 A. Well, to tell you the truth, I have to look  
21 and see what we've got here. Not as of  
22 September 8th.

23 Q. Turning to the next page as it appears in the  
24 packet. Can you identify that?

25 A. Yeah, that's a letter received from Mr.



1 Choate, the FOP representative, that they  
2 agreed to bypass the Step 3 grievance and  
3 forward the grievance to Step 4.

4 Q. How did this agreement come about?

5 A. Based on the conversation I had the previous  
6 day with Mr. Shivers.

7 Q. And is that conversation memorialized in this  
8 document?

9 A. Again, just the same thing, that we agreed to  
10 bypass Step 3 and proceed to Step 4.

11 Q. The next document in the packet?

12 A. The original grievance form from Mr.  
13 Cimperman.

14 Q. And does this document indicate what article  
15 and section of the Collective Bargaining  
16 Agreement that the Union alleges has been  
17 violated?

18 A. Yes, Article 17 Sections 17.1 and 17.5.

19 Q. Thank you.

20 A. Okay.

21 Q. I'm handing you what's been marked as Joint  
22 Exhibit A and would ask you to identify Joint  
23 Exhibit A?

24 A. Okay. That's Article 17, disciplinary  
25 action --

1 Q. No, the whole exhibit.

2 A. The New Philadelphia Police Department and the  
3 City of New Philadelphia contract agreement.

4 Q. And that contract agreement is between the  
5 City and the FOP?

6 A. Yes, it is.

7 Q. And the FOP represents patrol officers in the  
8 City of New Philadelphia?

9 A. Correct.

10 Q. Turning to the articles that the Union has  
11 alleged the City has violated. Do you see  
12 those contained in the Collective Bargaining  
13 Agreement?

14 A. Yes, I do.

15 Q. And for the record, will you please read  
16 Sections 17.1 and 17.5.

17 A. Okay. Section 17.1, "No bargaining unit  
18 member shall be reduced in pay or position,  
19 suspended, removed, or reprimanded except for  
20 just cause."

21 17.5, "The principles of progressive  
22 disciplinary action will be followed where  
23 appropriate."

24 Q. Thank you, Mayor.

25 And at any time, has any other

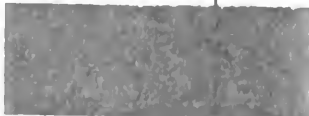
1 provision of the contract, to the best of your  
2 knowledge, alleged to have been violated?

3 A. No.

4 Q. And the last page of Joint Exhibit B, can you  
5 identify that?

6 A. Yeah, that's Step 2 from the Safety Director,  
7 Gregg Popham, and his answer and then just a  
8 Step 3 notification that it has been bypassed  
9 and forwarded to Step 4.

10 Q. And can you read into the record Mr. Popham's  
11 response to the grievance?

12 A. Okay. Response from Mr. Popham, "The grievant  
13 violated Police Department Standards of  
14 Conduct, Policy and Procedures: Dishonesty -  
15 altering, tampering, or modifying city  
16 equipment. Therefore, the termination  
17 stands." 

18 It's signed by Gregg Popham, Safety  
19 Director, on September 18, 2000.

20 Q. Thank you, Mayor.

21 MR. TSCHOLL: I have no further  
22 questions of this Witness.

23 THE ARBITRATOR: Any  
24 Cross-examination?

25 CROSS-EXAMINATION

1 BY MR. PIOTROWSKI:

2 Q. Mayor, are you the final decision maker as to  
3 the termination?

4 A. The final -- the termination was made by a  
5 letter from the Safety Director.

6 Q. Okay. Do you have the ability to reverse  
7 that?

8 A. Yes, I do in the Step 3 process.

9 Q. Did you look at the facts of the case?

10 A. Yes, I did.

11 Q. Okay. Did you consider all of the facts of  
12 all of the events that he was charged with?

13 A. Yes, I did.

14 Q. And do you feel he was being dishonest when he  
15 took the money from Lola Arrendondo to pay the  
16 fines?

17 A. Yes, I do.

18 Q. Why do you feel that is true?

19 A. Because the money was in his pocket for a  
20 month.

21 Q. Do you know who the check was made out to?

22 A. The check was made out to him.

23 Q. Do you know if he was, therefore, entitled to  
24 put it in his account?

25 MR. TSCHOLL: Objection.

1 A. No, as far as I was concerned he was not,  
2 because that money belonged to the City of New  
3 Philadelphia.

4 Q. Did it belong to the City of New Philadelphia  
5 before it was given to the City of New  
6 Philadelphia by Lola Arrendondo?

7 A. When the check was written, it was written to  
8 pay a fine that was due to the City of New  
9 Philadelphia.

10 Q. But who was it written to, Mayor?

11 A. It may have been written to him, but he was  
12 acting as an official of the City of New  
13 Philadelphia and, therefore, that money should  
14 have been deposited immediately with the City  
15 of New Philadelphia.

16 Q. Do you believe then that he told Lola  
17 Arrendondo that he was in charge of collecting  
18 fines for the Court?

19 MR. TSCHOLL: Objection as to what  
20 he believed. It's an improper question.

21 MR. PIOTROWSKI: I believe it's a --

22 THE ARBITRATOR: Whoa, wait. Go  
23 ahead.

24 MR. PIOTROWSKI: I believe the  
25 testimony to be key. What he believed is what

1 justified the termination.

2 THE ARBITRATOR: I'll overrule the  
3 objection.

4 Go ahead and answer.

5 THE WITNESS: I believe he  
6 represented himself as one that could take  
7 care of the fine, plain and simple.

8 BY MR. PIOTROWSKI:

9 Q. What if this had been his wife saying, "I can  
10 pay the fine for you"? Would he have been  
11 violating departmental policy?

12 MR. TSCHOLL: Objection to the  
13 question.

14 THE ARBITRATOR: Overruled.

15 Q. And so it was the fact that he works for the  
16 City, that was the key issue?

17 A. As an official patrolman, right.

18 Q. So what if he had been a part-time patrolman?

19 A. Same thing. Working for the City.

20 Q. What if Lola Arrendondo had been his sister?

21 A. Working for the City.

22 Q. So any time a police officer gets any amount  
23 of money, he's got to consider whether it's  
24 intended to pay off a fine before he deals  
25 with that money?

1 A. I think he knew what the money was for.

2 Q. So he wasn't entitled to put it in his account  
3 and make sure the check cleared before he  
4 fronted his own funds to the City?

5 A. No, he was not.

6 Q. How was he supposed to insure that he  
7 wasn't --

8 A. All he had to do was bring the check to the  
9 City.

10 Q. But the check wasn't made out to the City, was  
11 it?

12 A. He could have basically told the individual to  
13 pay the City. Either one of two ways. The  
14 fact is that the check had no business being  
15 in his account if it was to pay for a fine of  
16 a citizen.

17 Q. Okay. Now, if the citizen had given him the  
18 money prior to the fine ever coming to you and  
19 then said, "You know that money you owe me?  
20 Why don't you pay it to the City?" Would he  
21 have then been committing a violation?

22 MR. TSCHOLL: Objection.

23 THE ARBITRATOR: I think we're  
24 getting into --

25 MR. PIOTROWSKI: Your Honor --

1 MR. TSCHOLL: I --

2 THE ARBITRATOR: Gentlemen, two  
3 things. Number one, the court reporter won't  
4 be able to get all three voices at the same  
5 time. If Mr. Tscholl objects, let me rule  
6 before you continue on in your inquiry and  
7 let's not get into talking over one another.

8 Let's go back and start the question  
9 all over again.

10 Would you like to have it reread, Mr.  
11 Piotrowski?

12 MR. PIOTROWSKI: I'll restate it.

13 THE ARBITRATOR: Okay. Thank you.

14 BY MR. PIOTROWSKI:

15 Q. If it had been a preexisting debt that Lola  
16 Arrendondo asked Captain Cimperman to pay to  
17 the City to take care of her fines, would he  
18 have been violating policy?

19 MR. TSCHOLL: Objection.

20 MR. PIOTROWSKI: I'd like to hear the  
21 basis, so I can respond.

22 MR. TSCHOLL: The basis is  
23 speculation, relevancy regarding the issue  
24 that's presented to this Arbitrator.

25 MR. PIOTROWSKI: The Rule itself has



1 to be clear enough for the officer to obey,  
2 without question, as to what it requires.

3 If the person enforcing the Rule  
4 can't tell me what it means and how it applies  
5 in various situations, the Rule can't possibly  
6 be clear enough to justify termination.

7 THE ARBITRATOR: With Laszlo and OBK,  
8 the Rule established yet with respect to the  
9 receipt of funds and how that should be  
10 handled by an officer. If that's the focus of  
11 your inquiry, I think you need to lay a little  
12 foundation before you get into that.

13 BY MR. PIOTROWSKI:

14 Q. Which of the policies governs the receipt of  
15 funds by a police officer?

16 A. I would have no way of knowing that at this  
17 point.

18 Q. Did you look into the different policies to  
19 see which ones he had violated?

20 A. No, I did not.

21 Q. Do you know if any --

22 A. I deal with the Safety Director and the Chief  
23 of Police.

24 Q. So you do no personal investigation, you tend  
25 to trust what they tell you?

1 A. Exactly.

2 Q. Even if they tell you he's guilty of  
3 something?

4 A. These are part of my staff.

5 Q. And if they tell you he's guilty, he's guilty?

6 A. I'm not an investigator. I'm the Mayor. I  
7 make the decisions based on whatever  
8 information is put in front of me.

9 Q. Did you review the statement regarding the  
10 Ebay transactions?

11 A. I reviewed the statements that were given to  
12 me as such.

13 Q. And what did you determine from those  
14 statements?

15 A. I determined that Mr. Cimperman was acting  
16 inappropriately in his position as an employee  
17 of the City of New Philadelphia.

18 Q. With regards to selling radio equipment over  
19 the Internet?

20 A. With regards to representing himself as a  
21 representative of the City of New  
22 Philadelphia.

23 Q. Now, there was a Mr. Ayers who called the  
24 Police Department to complain about Officer  
25 Cimperman; do you recall that?

1 A. I recall just what was reported to me on it.

2 Q. Okay. And Mr. Ayers complained to the City  
3 that he had bought this stuff from a New  
4 Philadelphia citizen and hadn't gotten it,  
5 correct? Do you recall these facts?

6 A. Not exactly, but I recall part of it. I  
7 couldn't recall it word for word.

8 Q. Now, do you know if Mr. Ayers knew if Officer  
9 Cimperman was a police officer for New  
10 Philadelphia?

11 A. I do not believe so at that time. I believe  
12 he called to complain about just somebody in  
13 New Philadelphia. And I can't say either way  
14 for sure.

15 Q. Did you review the matter prior to your  
16 testimony today?

17 MR. TSCHOLL: Objection.

18 A. I think --

19 THE ARBITRATOR: Whoa. There's an  
20 objection here.

21 May I have the question read back,  
22 please? I'm sorry.

23 (The reporter read the record as requested.)

24 MR. TSCHOLL: My objection -- this  
25 exceeds the scope of my examination. He's

1 getting into all sorts of areas that the Mayor  
2 did not testify about.

3 The Mayor basically testified about  
4 the timing on the grievance trail and the fact  
5 that the Step 3 was waived and that there was  
6 no Step 3. That's all he's testified to.

7 I mean, if he wants to call the Mayor  
8 on cross, that's fine, but that was not part  
9 of the testimony of the Mayor.

10 THE ARBITRATOR: Well, the unobjected  
11 testimony of the Mayor at the outset on  
12 Cross-examination was that he had the ability  
13 to reverse the decision of discharge. And I  
14 think the inquiry with respect to his  
15 conclusions are appropriate.

16 MR. TSCHOLL: May I just point out  
17 though --

18 THE ARBITRATOR: I understand your  
19 rule, that you called this person as a witness  
20 as being a Step 3 Hearing Officer, and I think  
21 Mr. Piotrowski is exploring the functions of a  
22 Step 3 Hearing Officer, as well as his  
23 authority. And after establishing that, he's  
24 making inquiry to see what investigation was  
25 conducted.

1                   Go ahead you wanted to say --

2                   MR. TSCHOLL:       But the Step 3 was  
3                   waived. I would point out that there was no  
4                   Step 3. The parties agreed to waive it. So  
5                   there's been no testimony that he considered  
6                   anything, except the waiver of the Step 3.

7                   MR. PIOTROWSKI:       He did, in  
8                   fact, waive the Step 3. Notwithstanding that  
9                   waiver, he is the final decision maker.

10                  If the Mayor leaves the stand now and  
11                  we hear from the Safety Director and the  
12                  Chief, that they just pass up the  
13                  recommendation, who do I question as to the  
14                  final decision?

15                  THE ARBITRATOR:   Okay. I will permit  
16                  this inquiry subject to your motion to strike  
17                  in the event the basis for this line of  
18                  inquiry is that this is the final decision  
19                  maker and predicated upon what the Chief will  
20                  testify and the Safety Director.

21                  MR. PIOTROWSKI:   Mr. Arbitrator, if  
22                  you want me to, I can recall the Mayor on  
23                  Direct as a hostile witness, but usually we  
24                  try to avoid the inherent delay.

25                  THE ARBITRATOR:   I agree and I think

1           that's the reason I suggest, let's continue  
2           with this line of inquiry. In the event that  
3           you still feel it's inappropriate, I will  
4           entertain a motion to strike this testimony.

5                   MR. TSCHOLL:        I just want to point  
6           out that I believe that the Mayor testified  
7           that the Safety Director had the final  
8           decision in his role in the grievance  
9           procedure, which he does have the ability to  
10          make a decision on the grievance, which in  
11          this particular case, at the Union's request,  
12          the parties waived. I mean, that's --

13                   THE ARBITRATOR:   Well, my  
14          understanding of the testimony thus far is  
15          that Step 3 was waived and I did question, in  
16          my own mind, the inquiry of counsel for  
17          Grievant, but I don't know quite what  
18          responsibility the Mayor has in this process  
19          and that's why I'm permitting his questioning  
20          to go forward, subject to your motion to  
21          strike at the conclusion of the case or at any  
22          time.

23                   BY MR. PIOTROWSKI:

24          Q.     Our last question was, I believe: Did you  
25          discuss your testimony here prior to today?

1 A. Shortly this morning. It was regarding the  
2 grievance procedure, Step 1, 2 and 3. That's  
3 all it was.

4 Q. Now, did you state that you would review the  
5 facts of the case as they were presented to  
6 you?

7 A. I basically reviewed what they have given me  
8 through the Step 1 and the Step 2 process.  
9 There was no Step 3 hearing, so I did not  
10 delve into it any further than that.

11 Q. Okay. Now, did you make any conclusions at  
12 all as to the validity of the grievance?

13 A. Personal conclusions, on my part, that the  
14 grievance had no validity?

15 Q. You had reached that conclusion?

16 A. What? This was just mine based on the only  
17 information I was given.

18 Q. Okay. Now, did you make any presumptions  
19 about guilt based on Captain Cimperman's  
20 silence at the predisciplinary hearing?

21 A. As to why he didn't say anything, I did not  
22 base any assumptions regarding that.

23 Q. Okay. Did you question the fact that there  
24 was no interview of Captain Cimperman in any  
25 of the material presented to you?

1 A. That seemed to be up to Captain Cimperman to  
2 supply me with whatever information or  
3 whatever argument he had regarding why he  
4 shouldn't be fired and that was never done.

5 Q. Well, Mayor, let me ask a question: If you're  
6 investigating a wrongdoing of an individual,  
7 isn't it normal to talk to that individual?

8 A. I would be -- I was not investigating the  
9 wrongdoing or the right of either way, because  
10 there was no Step 3 hearing scheduled.

11 Q. Okay. As the Mayor, you are responsible for  
12 the actions of your subordinates, correct?

13 A. Correct.

14 Q. And you review those actions on a daily basis,  
15 correct?

16 A. Um-hum.

17 Q. And terminations of a Captain in your police  
18 force is something you're going to review,  
19 right?

20 A. Right.

21 Q. Okay. Were you involved in conversations  
22 about this matter at the time it occurred?

23 A. Sure, I was, with the Safety Director.

24 Q. But you didn't make any presumptions based on  
25 Captain Cimperman's silence at his



1           predisciplinary hearing?

2       A.    I was satisfied with the recommendation of the  
3           Safety Director.

4       Q.    Notwithstanding the fact that there had been  
5           no interview of Captain Cimperman at any  
6           point?

7       A.    I was satisfied with the recommendation of the  
8           Safety Director; that's his job.

9       Q.    Now, do you know what the enforcement  
10           guidelines for the use and care of property  
11           and equipment are?

12      A.    No, again, that's the Safety Director's job.

13      Q.    If you look and see Exhibit 1 through 92,  
14           page 25.

15                   Do you know if that is, in fact, the  
16           policy governing proper use and care of  
17           property or equipment to the City?

18      A.    As far as I know, it is and I'm not familiar  
19           with it.

20      Q.    So you didn't actually review this?

21      A.    No, I did not.

22                   MR. PIOTROWSKI:   I have no further  
23           questions.

24                   MR. TSCHOLL:       That's all.   Thank  
25           you, Mayor.

1 Are you going to call him on Direct?

2 MR. PIOTROWSKI: I may.

3 THE ARBITRATOR: Next Witness.

4 MR. TSCHOLL: Mr. Cimperman.

5 MR. PIOTROWSKI: I'm going to  
6 object. The City has maintained and, in fact,  
7 counsel for the City, as recently as Monday,  
8 suggested that they intended to indict Captain  
9 Cimperman.

10 In addition, we know that it is up to  
11 the City as to whether or not the Prosecutor  
12 is going to push forward this. This is merely  
13 a ploy by the City to attempt to force Officer  
14 Cimperman into taking his Fifth Amendment  
15 protections.

16 Now, they had the opportunity to  
17 order him to answer questions. They have the  
18 opportunity to order him to answer questions.  
19 I won't object to an order that he answer the  
20 questions at this hearing, but the attempt  
21 here to drag him onto the stand so they can  
22 attempt to bolster their case for a felony  
23 charge, is a misuse of this procedure. And,  
24 in fact, is a misuse of the legal system in  
25 general.

1                   For ten months now, since last  
2                   August, we haven't had any charges brought.  
3                   Yet the City - which we have a letter saying  
4                   it's up to them, the ball is in their court -  
5                   wants to threaten prosecution, then try to  
6                   keep my guy off the stand.

7                   It's their job to present their  
8                   case. If they want to cross-examine my  
9                   Grievant, I'll call him. But, you know, this  
10                  is a misuse of the system.

11                 MR. TSCHOLL:        I'm presenting my  
12                 case. I'm calling my witness. I'm calling  
13                 the witness, the Grievant. This is not a  
14                 criminal hearing. This is a civil hearing.  
15                 An arbitration.

16                 MR. PIOTROWSKI:    They had no  
17                 testimony from my Grievant when they made the  
18                 decision to terminate, and I don't see where  
19                 his testimony now can have affected that  
20                 decision.

21                 If you didn't know then, what  
22                 difference does it make now?

23                 MR. TSCHOLL:        I have a right to  
24                 call my witnesses and I am calling Mr.  
25                 Cimperman. It's as simple as that.

1 THE ARBITRATOR: You mentioned in  
2 your Opening Statement 2913.04 of the Revised  
3 Code?

4 MR. TSCHOLL: That's correct.

5 THE ARBITRATOR: And what is that?  
6 I'm not that familiar with the Criminal Code.  
7 What is that?

8 MR. PIOTROWSKI: Unauthorized use,  
9 Mr. Arbitrator.

10 THE ARBITRATOR: I'm sorry? It's  
11 what?

12 MR. PIOTROWSKI: Unauthorized use of  
13 virtually anything, but it talks about a  
14 telecommunication system and it covers cable  
15 box violations, etc., computer hacking.

16 THE ARBITRATOR: And that, Mr.  
17 Tscholl, has been presented to the Grand Jury  
18 for --

19 MR. TSCHOLL: No, it has not. As  
20 far as I know, it has not. I did have it  
21 here.

22 THE ARBITRATOR: Well, the penalties  
23 that are imposed would include a felony? It  
24 would appear so.

25 MR. PIOTROWSKI: Yes. Your Honor,

1 all this is, is a way around Garrity versus  
2 New Jersey case.

3 Garrity versus New Jersey states that  
4 a police officer cannot be fired for refusing  
5 to answer questions, unless he is first  
6 immunized with regards to his answers to those  
7 questions.

8 It arose when officers in New Jersey  
9 were charged with a ticket fixing scheme.  
10 When they were confronted by their Chief and  
11 FBI agents, they had to answer the questions.  
12 They had been ordered to do so. They refused  
13 based on Fifth Amendment grounds. They were  
14 all terminated.

15 The U.S. Supreme Court determined  
16 that those terminations had to be reversed,  
17 because those officers had, in fact, obtained  
18 a property interest in their jobs, due to the  
19 just cause provisions and the civil service  
20 provisions.

21 Because they had a property interest,  
22 that property interest could not be taken away  
23 due to the exercise of the Constitutional  
24 Right; i.e., the Fifth Amendment right;  
25 therefore, the Court, which recognized the

1        need of police agencies to question their  
2        officers, stated that, you can require them to  
3        answer the questions, but you have to immunize  
4        them first. Anything they say, can't be used  
5        against them in court and any fruit of the  
6        poisonous tree, can't be used against them in  
7        court.

8                Recognize what's happened here. The  
9        Police Department had every possibility and  
10       every opportunity to question Captain  
11       Cimperman before he had been terminated. All  
12       they had to do was tell him what he said  
13       couldn't be used against him in a court of  
14       law.

15               During this entire period, they were  
16       threatening him with criminal prosecution.  
17       When he said, "No, I'm not going to answer  
18       those questions on the advice of counsel,  
19       because you've threatened me with criminal  
20       prosecution," they refused to immunize him.

21               Now they want to go on the record  
22       with the court reporter and take his testimony  
23       under oath. The exact thing -- and this is to  
24       get him his job back, the exact thing that the  
25       court forbade, which is the loss of your job

1 based on the exercise of your Fifth Amendment  
2 right.

3 My decision as to whether or not to  
4 put my Grievant on the stand, opens the door,  
5 if that's what I choose to do. But given this  
6 case where they have alleged in their Opening  
7 Statement, a felony violation, to allow him  
8 now to force my officer to testify, would be a  
9 violation of the U.S. Constitution, because  
10 he's acting as an agent of the City.

11 He's a state actor and he can't  
12 punish my officer in any way related to his  
13 job because of his exercise of the Fifth  
14 Amendment.

15 THE ARBITRATOR: "Garrity" is  
16 spelled how?

17 MR. TSCHOLL: G-a-r-r-i-t-y.

18 THE ARBITRATOR: And do you have the  
19 Supreme Court cite on that?

20 MR. PIOTROWSKI: I --

21 THE ARBITRATOR: We can get it some  
22 other time.

23 MR. PIOTROWSKI: It's in the back of  
24 the FOP book.

25 THE ARBITRATOR: Mr. Tscholl, do you

1 have any disagreement with the statement of  
2 law that Mr. Piotrowski has advised us is  
3 contained in the Garrity case?

4 MR. TSCHOLL: Garrity -- a police  
5 officer cannot be compelled to give testimony  
6 where there is a pending criminal violation.  
7 If he is compelled, that testimony cannot be  
8 used against him in whatever the criminal  
9 allegation is. That's what Garrity says.

10 THE ARBITRATOR: Well, calling him on  
11 Cross-examination would be compelling him to  
12 testify; would it not?

13 MR. TSCHOLL: Yes, and if we do  
14 that, then his testimony cannot be used  
15 against him in a 2913.04 investigation by the  
16 County Prosector. Cannot.

17 THE ARBITRATOR: So you're prepared  
18 to immunize him for that purpose?

19 MR. TSCHOLL: I'm calling him on  
20 Cross-examination.

21 MR. PIOTROWSKI: That didn't  
22 necessarily answer the question. You're  
23 telling him that anything he says here cannot  
24 and will not be used against him in a court of  
25 law?



1 MR. TSCHOLL: If he is compelled  
2 to testify, as he is when I call him on  
3 Cross-examination, then that testimony cannot  
4 be used by the prosecutor in a 2913.04.

5 MR. PIOTROWSKI: Do you have a cite  
6 for that?

7 MR. TSCHOLL: Garrity.

8 MR. PIOTROWSKI: Okay. Garrity says  
9 he can't be fired for refusing to testify.  
10 Now, what you've stated is the reversal of  
11 Garrity.

12 MR. TSCHOLL: Well then, we  
13 disagree on Garrity.

14 MR. PIOTROWSKI: I mean, the fact  
15 pattern I established, the officers didn't  
16 testify, so you can't have used that fact  
17 pattern to establish that what they said  
18 couldn't be used against them. Because they  
19 refused to testify and they were fired and the  
20 Court said they had to be given their jobs  
21 back.

22 Now, there are reverse Garrity cases  
23 that came out in New York, which said that the  
24 officer testified and then that was used  
25 against him, that had to be excluded. Okay?

1 Which is the side you're saying.

2 And I don't necessarily disagree, but  
3 if we are going to force him to testify here.  
4 Okay? I want an order from the Chief in  
5 writing, and from you as a representative of  
6 the City, that what's going to be said here  
7 cannot and will not be used against him in  
8 court.

9 MR. TSCHOLL: I just made that  
10 representation on the record as the City's  
11 Attorney; have I not?

12 MR. PIOTROWSKI: Okay. So my  
13 understanding is that notwithstanding the  
14 existence of Garrity, what you're saying as a  
15 representative of the City, is if he answers  
16 questions here, nothing he says can and will  
17 be used against him in a court of law?

18 THE ARBITRATOR: In a criminal  
19 prosecution?

20 MR. PIOTROWSKI: In a criminal  
21 prosecution.

22 MR. TSCHOLL: In a criminal  
23 prosecution for violation of 2913.04, which is  
24 what the letter from the Prosecutor claims is  
25 being investigated.

1 MR. PIOTROWSKI: Well, I mean, all of  
2 the criminal violations -- 2913.04, you know,  
3 a good prosecutor can come up with other  
4 violations. Either he is immunized for his  
5 statement or he's not immunized for his  
6 statement.

7 THE ARBITRATOR: I think what he's  
8 seeking is any criminal charges that might  
9 emanate from this testimony.

10 MR. TSCHOLL: Regarding the radios  
11 and modifications of the radios?

12 MR. PIOTROWSKI: Lola Arrendondo.  
13 Everything involved here.

14 MR. TSCHOLL: Everything involved  
15 here, but not the -- the Court needs to know  
16 that very recently there's been new  
17 allegations against Mr. Cimperman for perjury  
18 that are totally unrelated to this that  
19 appeared just last week where the Prosecutor  
20 dismissed the case, because it was alleged  
21 that Mr. Cimperman perjured himself.

22 MR. PIOTROWSKI: Which is, of course,  
23 unrelated to the charges at hand here.

24 THE ARBITRATOR: Right.

25 MR. PIOTROWSKI: But you've put me in

1 an untenable position.

2 THE ARBITRATOR: No, no, no. Let  
3 me -- you are -- I don't know that I would  
4 characterize it as "untenable," but I would  
5 characterize it as, in a position where you  
6 have to give considerable and serious thought  
7 about what you prepare to do in light of this  
8 characterization that the testimony could not  
9 be used against him in a criminal case.

10 I believe, of course, you will have  
11 to discuss this thoroughly with your client  
12 before you make this decision.

13 It's my suggestion; therefore, that  
14 we proceed with your next witness. Hold in  
15 abeyance calling the Grievant at this  
16 particular time and at recess, he can discuss  
17 it with his client.

18 MR. TSCHOLL: I need -- my  
19 proceeding in this case has been planned  
20 around this testimony. So I would ask that  
21 Mr. Piotrowski and Mr. Cimperman make that  
22 decision now.

23 And, again, the testimony that -- I  
24 mean, we agree that he's compelled through  
25 being called on Cross-examination to testify

1       about these radio modifications. That  
2       anything that's related to that, whether or  
3       not this is the only charge, cannot be used  
4       against him in a reverse Garrity type  
5       situation in any criminal prosecution;  
6       however --

7               MR. PIOTROWSKI: This is an awful lot  
8       of dancing around for a rather simple issue.  
9       If what he says cannot be used against him in  
10      criminal court regardless of what he says,  
11      that's what I want. And I want the Chief to  
12      say it, too.

13             MR. TSCHOLL:       Do you have any  
14      problems saying that?

15             CHIEF STAGGERS: I don't have any  
16      problem saying that.

17             MR. PIOTROWSKI: Chief, you agree  
18      that any statement made by Officer Cimperman  
19      at this hearing, under oath, cannot be used  
20      against him in any court of law?

21             CHIEF STAGGERS: That's correct.

22             MR. TSCHOLL:       Pertaining to the  
23      radio, not pertaining to the --

24             MR. PIOTROWSKI: Any court of law.  
25      This is an isolated little bubble. What's

1       said here doesn't go any further. You know,  
2       it's fruit of the poisonous tree. If you find  
3       out something here, you go --

4               MR. TSCHOLL:       No, no, no. There  
5       are unrelated charges that just cropped up  
6       last week pertaining to Mr. Cimperman that  
7       have nothing to do with this.

8               MR. PIOTROWSKI: Bob, I'm not asking  
9       for transaction immunity. I'm not saying that  
10      you are immunizing him from prosecution for  
11      that allegation of perjury. Okay? What I'm  
12      saying is, if what he says --

13              MR. TSCHOLL:       You are not  
14      saying -- let me make that clear.

15              MR. PIOTROWSKI: No, it's not  
16      transactional immunity.

17              MR. TSCHOLL:       Right.

18              MR. PIOTROWSKI: This is merely what  
19      he says here can't hurt him. You can't take  
20      what he says here and go to the Prosecutor  
21      with it and say, "He said under oath on the  
22      3rd of May this and that's not true so we want  
23      him."

24              MR. TSCHOLL:       Right, that's  
25      correct. I agree with that.

1 THE ARBITRATOR: And the Chief does  
2 as well?

3 CHIEF STAGGERS: I agree.

4 THE ARBITRATOR: Okay. If you want  
5 to take a recess and discuss this --

6 MR. PIOTROWSKI: I think I should  
7 tell my client exactly what just happened.

8 THE ARBITRATOR: Yeah, I think so,  
9 too. How much time do you need?

10 MR. PIOTROWSKI: Five minutes.

11 (A brief recess was had.)

12 MR. PIOTROWSKI: Now, Mr. Arbitrator,  
13 we have David Cimperman, the Grievant, here in  
14 the witness chair.

15 He is testifying based upon the  
16 assertions of the Police Chief for the City of  
17 New Philadelphia.

18 THE ARBITRATOR: It would be the  
19 agreement of the Police Chief and the Attorney  
20 for the City of New Philadelphia?

21 MR. PIOTROWSKI: Right. That what he  
22 says can't and won't be used against him in  
23 court. Constituting use immunity, but not  
24 transactional immunity here, obviously.

25 That his statements here will be used

1 strictly for administrative purposes, i.e.,  
2 the matter at hand with us. Although, both  
3 sides recognize that in a civil matter, these  
4 statements may come out as part of the record.

5 THE ARBITRATOR: So the immunity - as  
6 you've characterized it in earlier  
7 discussions - relates to criminal actions  
8 only, not civil?

9 MR. PIOTROWSKI: Right, because there  
10 is no immunity available for civil actions.

11 THE ARBITRATOR: Correct. Thank you.

12 MR. PIOTROWSKI: And I'd like it if,  
13 Bob, that is a proper statement of our  
14 agreement?

15 MR. TSCHOLL: Let's go off the  
16 record for a moment.

17 THE ARBITRATOR: Let's keep this on  
18 the record so I can understand it.

19 MR. PIOTROWSKI: To define the  
20 difference between transactional immunity and  
21 use immunity. Transactional immunity is: "You  
22 can't be punished for this crime. Now tell us  
23 about it."

24 Use immunity is, "Whatever you say  
25 here can't be used against you so you're



1 required to answer the questions. That doesn't  
2 mean that we can't get other evidence to come  
3 after you, but what you say here, can't be  
4 used against you."

5 THE ARBITRATOR: Transactional?

6 MR. PIOTROWSKI: Transactional is  
7 just a blanket immunity.

8 MR. TSCHOLL: A blanket -- it's a  
9 broader immunity than --

10 MR. PIOTROWSKI: Right, use immunity  
11 only applies to the statements made right here  
12 today. And those statements - the Garrity  
13 I've got, is those statements - what he says  
14 on the stand today, can't be used against him  
15 in court -- or in a criminal court.

16 MR. TSCHOLL: That's correct.

17 MR. PIOTROWSKI: And, Chief, that's  
18 your understanding also?

19 CHIEF STAGGERS: That's correct.

20 THE ARBITRATOR: Okay. Would you  
21 swear Mr. Cimperman in?

22 WHEREUPON,

23 DAVID F. CIMPERMAN

24 who, being first duly sworn, testified as  
25 follows:

CROSS-EXAMINATION

BY MR. TSCHOLL:

Q. Mr. Cimperman, would you state your name for the record.

A. David F. Cimperman Junior.

Q. And are you employed?

A. I own a business right now.

Q. And what is the name of that business?

A. DC Wireless.

Q. And how long have you owned that business?

A. December 1st.

Q. What year?

A. Just last year.

Q. Is that business incorporated?

A. No.

Q. What does the business do?

A. Cellular phone and paging.

Q. Where is the business located?

A. Massillon.

Q. Are you the sole proprietor of that business?

A. Yes.

Q. Do you have any partners?

A. No.

Q. What address is that business located at?

A. 126 Erie Avenue South in Massillon.

1 Q. Is that business similar to the business that  
2 you were operating down here when you were  
3 with the New Philadelphia Police Department?

4 A. Yes.

5 Q. What was the name of the business that you  
6 were operating down here?

7 A. It was Pager Central.

8 THE ARBITRATOR: I'm sorry?

9 THE WITNESS: Pager Central; two  
10 words.

11 Q. Did you file a tax return for that business?

12 A. We filed tax returns, yes.

13 Q. Did you file a tax return for the business  
14 that was started, did you say, in November of  
15 2000?

16 A. December.

17 Q. December.

18 MR. PIOTROWSKI: I'm going to object  
19 here. I'm not sure what relationship this has  
20 to the question presented in the charge sheet  
21 or in the termination document.

22 THE ARBITRATOR: I have some  
23 difficulty in seeing the relevance.

24 MR. TSCHOLL: I'll move on.

25 THE ARBITRATOR: Go ahead. Thank

1           you.

2           BY MR. TSCHOLL:

3       Q.    Prior to starting that business, were you  
4           employed?

5       A.    Yes.

6       Q.    By whom?

7       A.    A company called Pagetel Incorporated out of  
8           Akron.

9       Q.    And what were your dates of employment with  
10          that company?

11      A.    I don't remember off the top of my head, but  
12          it was sometime after I terminated from New  
13          Philadelphia prior to my starting the business  
14          in December.

15      Q.    How long were you employed by that company?

16      A.    A month or two.

17      Q.    Why did you leave?

18      A.    Because I started my own business.

19      Q.    And prior to that employment, were you  
20          employed?

21      A.    No, other than New Philly.

22      Q.    And what was your position with the City of  
23          New Philly?

24      A.    Captain.

25      Q.    What were the dates of employment?

1 A. Hired June 13th of 1994. Promoted to Captain  
2 June 30th of 2000. Terminated, I believe, it  
3 was August 30th of 2000.

4 Q. Mr. Cimperman, have you surreptitiously taped  
5 conversations between yourself and various  
6 members of the City of New Philadelphia Police  
7 Department?

8 MR. PIOTROWSKI: Objection.

9 THE ARBITRATOR: Relevancy?

10 MR. TSCHOLL: Relevancy is,  
11 apparently, there's going to be some issue as  
12 to what was said at one of the meetings. In  
13 particular, the meeting on August 4, 2000 and  
14 I want to know -- I mean, there's a  
15 credibility issue there from the Opening  
16 Statement regarding what was said at that  
17 meeting. And my question pertains to -- I  
18 want to know whether or not that meeting was  
19 taped.

20 MR. PIOTROWSKI: Mr. Tscholl asked me  
21 yesterday whether or not I was going to  
22 introduce any tapes as evidence and I assured  
23 him that I was not. You know, I'm willing to  
24 stand by that. There are no tapes we intend  
25 to introduce as part of this case.

1 THE ARBITRATOR: Is the question  
2 focused on August 4, 2000 in general?

3 MR. TSCHOLL: Generally, because I  
4 think, again, the issue here is truthfulness  
5 and untruthfulness. And, apparently, I think  
6 that it's relevant to show the character of  
7 the Grievant in this case that if, in fact, he  
8 surreptitiously taped superiors and if, in  
9 fact, he did, that may be in violation of the  
10 rules and regulations in addition to what  
11 we've charged him with here.

12 MR. PIOTROWSKI: Before we get too  
13 far --

14 THE ARBITRATOR: Let me respond to  
15 that. I think the additional violations would  
16 not impact this grievance and the merits of  
17 this grievance.

18 The taping of individuals  
19 surreptitiously without focusing on an issue  
20 in this case, I don't think is relevant.  
21 Since there has been some mention of the  
22 August 4th hearing, that seems to have some  
23 relevance, but I do --

24 MR. TSCHOLL: May I respond  
25 further?

1 THE ARBITRATOR: Yeah, please do,  
2 because I have difficulty understanding how  
3 this could be relevant.

4 MR. TSCHOLL: If, in fact, there's  
5 a taping of that meeting and they're going to  
6 claim that what the City is going to contend  
7 was said at that meeting wasn't said, and if,  
8 in fact, he surreptitiously taped it and it's  
9 going to disagree with what was said and  
10 doesn't present that tape, then I believe that  
11 that's very relevant to this hearing.

12 THE ARBITRATOR: Well, if he doesn't  
13 present the tape, then it wouldn't have any  
14 value in countering the accuracy of the  
15 testimony of the people who were at that  
16 hearing.

17 I realize in arbitrations there's  
18 very little discovery. This seems to be more  
19 of a discovery issue than it does appear to be  
20 focusing on the issues that are before me.

21 MR. TSCHOLL: Also, Mr. McIntosh,  
22 there's been some discussion that Mr.  
23 Cimperman was not liked. And, apparently,  
24 that is going to be used by the Union as the  
25 real reason that he was terminated, because he

1        wasn't liked. And I think the fact that an  
2        employee will go around and surreptitiously,  
3        in a paramilitary organization, tape his  
4        superiors, is certainly evidence that is  
5        relevant to this particular case given all  
6        that you've heard.

7                Also, there is a rule and regulation  
8        that there is precedent in arbitrations for  
9        predischarge conduct being admitted by an  
10       arbitrator. And that's an issue I'd like to  
11       brief incidentally. And you can either accept  
12       it or reject it based upon the briefs, but, at  
13       least, I'd like to get it in the record and  
14       you can do with it what you like. There is a  
15       legal basis for that and I could cite to that  
16       basis right now if you'd care to hear the  
17       basis, I've got the cites.

18               THE ARBITRATOR: That would be fine.

19               MR. TSCHOLL: Do you want me to  
20       give you the cite?

21               THE ARBITRATOR: Your representation  
22       that you have the authority to support it, I  
23       will accept this for the purposes of this  
24       discussion, the ruling on this question and  
25       issue.



1 MR. PIOTROWSKI: I'm confused. We're  
2 going to go into -- I think what Mr. Tscholl  
3 just said is that we're going to discuss and  
4 develop evidence regarding uncharged alleged  
5 misconduct?

6 THE ARBITRATOR: I believe that's a  
7 fair characterization.

8 MR. PIOTROWSKI: Are we going to  
9 limit that to misconduct that's clearly wrong,  
10 or are we going to say that he may have not  
11 shined his shoes in 1996, three days after he  
12 was hired? Are we going to talk about in 1997  
13 when he may have driven his car too fast?  
14 These are not items that were charged.

15 Taping, by the way, notwithstanding  
16 the characterization of "surreptitious" is  
17 something that is taught at the Ohio Police  
18 Officers Training Academy. And, in fact, they  
19 make tape recorder holsters for the gun belts  
20 that these officers carry.

21 Whereas, attorneys are not permitted  
22 to tape conversations with their clients and  
23 general conversations, the public is not  
24 restricted in recording any conversation in  
25 which they are a party in Ohio.

1 Ohio is a one-party state. One party  
2 to the conversation can record the  
3 conversation.

4 In a case where the Chief has alleged  
5 that the Grievant violated the rules by  
6 creating an untaped line out of the police  
7 department, I find it somewhat hilarious that  
8 the objection is now that there might be a  
9 tape recording of a conversation and this is  
10 somehow a violation of departmental policies  
11 to tape a conversation.

12 And notwithstanding how you or I feel  
13 about tape recording coworkers, there is no  
14 policy that's been cited here and it's not a  
15 charged offense.

16 THE ARBITRATOR: Let me rule. I will  
17 entertain some further comment, depending on  
18 how you react to my ruling.

19 There has been no evidence at this  
20 stage in the proceeding, that any of the  
21 officers who have been said to dislike the  
22 Grievant, were aware of any taping that would  
23 have precipitated the dislike that was  
24 discussed in Opening Statements. And, indeed,  
25 the Opening Statement is not evidence at this

1 point.

2 I will permit these questions to be  
3 asked on your representation, Mr. Tscholl,  
4 that you have authority and will present  
5 authority that this is, one, a violation of  
6 departmental policy. Two, that these  
7 undiscovered acts can be used as evidence to  
8 justify the decision to terminate the  
9 Grievant.

10 And I might say to you, that that  
11 authority will have to be quite persuasive,  
12 because I have in the past, generally, felt  
13 that the merits of the Grievant have to rise  
14 and fall with what the parties knew at the  
15 time of the discipline, and not with what they  
16 discover after the discipline has been  
17 administered.

18 And I will similarly entertain a  
19 motion to strike this testimony, both in  
20 briefing and at the conclusion of the hearing,  
21 by the Grievant's counsel.

22 Do you all understand what I'm  
23 saying?

24 MR. TSCHOLL: I understand.

25 THE ARBITRATOR: Okay.

1 MR. TSCHOLL: So it's subject to a  
2 motion to strike, is what you're saying, if we  
3 don't meet your standard as you've stated it?

4 THE ARBITRATOR: Yes.

5 MR. TSCHOLL: Fair enough.

6 THE ARBITRATOR: And I feel I will  
7 give myself the same cautionary instruction  
8 that a judge gives the jury, that evidence  
9 that I hear that is irrelevant, I will not  
10 consider.

11 Go ahead.

12 MR. TSCHOLL: Very good.

13 BY MR. TSCHOLL:

14 Q. Mr. Cimperman, have you surreptitiously taped  
15 conversations between yourself and other  
16 members of the New Philadelphia Police  
17 Department?

18 A. Myself, like half a dozen officers including  
19 Captain Urban, have carried tape recorders  
20 both for on the street making traffic stops,  
21 making sure that there's no false accusations,  
22 and when I've had conversations with  
23 individuals within the Police Department, yes,  
24 I have at times.

25 Q. Okay. I was not talking about a legitimate

1 reason for carrying a tape record such as  
2 you've first mentioned, the first example  
3 you've mentioned, the traffic stops. You  
4 understand that? My question was - and if you  
5 listen to my question, you know, we'll get  
6 through this a lot quicker - have you  
7 surreptitiously --

8 MR. PIOTROWSKI: Objection as to the  
9 characterization.

10 THE ARBITRATOR: I sustain the  
11 objection with respect to characterization. I  
12 think the characterization prompted the  
13 prologue to his response as his response  
14 concluded in saying, "Yes, I have at times  
15 taped conversations with members of the police  
16 department."

17 BY MR. TSCHOLL:

18 Q. And what is the reason that you  
19 surreptitiously taped conversations with  
20 members of the New Philadelphia Police  
21 Department?

22 MR. PIOTROWSKI: I'm going to object,  
23 again, to both the characterization and the  
24 question itself. What possible relevance  
25 would it have that he chose to record these

1           conversations? What effect could that have on  
2           whether or not they disliked him?

3                     If he's taping conversations and,  
4           therefore, people don't like him or it's a  
5           violation of policy or he could get fired for  
6           it --

7                     THE ARBITRATOR: I've already ruled  
8           with respect to this line of questioning. I  
9           think we can move forward better if you  
10          withdraw with the use of the  
11          word "surreptitiously."

12                    It's my decision as to whether or  
13          not surreptitious -- first, whether or not  
14          it's relevant. And, secondly, whether or not  
15          it is surreptitious. And then if  
16          surreptitious, then whether or not that's a  
17          violation of the policy.

18          BY MR. TSCHOLL:

19          Q.    Have you taped other members of the New  
20          Philadelphia Police Department unbeknownst to  
21          them?

22          A.    I have taped conversations that I have had  
23          with quite a few people, including members of  
24          the New Philadelphia Police Department. Some  
25          I'm sure they were aware. Some probably not.

1 Q. And what is the reason that you would tape a  
2 conversation with a member of the New  
3 Philadelphia Police Department that they would  
4 not be aware of?

5 A. Quite some time ago, Captain Jeff Urban  
6 explained to me, that through the years that  
7 he has had some difficulties with officers  
8 making false statements against him.

9 He began recording quite a few of his  
10 conversations and told me that that's what he  
11 recommended for me to do, because then when  
12 this person or someone comes up and says  
13 that "So and so said this," you have proof  
14 that did or did not occur.

15 There's been a couple of times where  
16 I think it's probably been a benefit to me.

17 I've had, for instance, Captain Larry  
18 Kopp make a false accusation quite some time  
19 ago. Had I been able to prove that at the  
20 time, maybe I wouldn't have had some of the  
21 problems I have today.

22 THE ARBITRATOR: Pardon me, would you  
23 spell the names John Kopp and John Singerman?

24 THE WITNESS: I said Jeff Urban,  
25 U-r-b-a-n.

1 THE ARBITRATOR: U-r-b-e-n?

2 THE WITNESS: -b-a-n.

3 MR. PIOTROWSKI: "B" as in "Boy."

4 ARBITRATOR: Okay. Thank you.

5 And the other one, Larry?

6 THE WITNESS: Kopp, K-o-p-p.

7 THE ARBITRATOR: Okay. Thank you.

8 BY MR. TSCHOLL:

9 Q. Did you tape record the meeting that you had  
10 on August 4, 2000 with Chief Staggers and  
11 Safety Director Popham?

12 A. I don't know.

13 Q. You don't know?

14 A. I don't know.

15 Q. And how would you find out whether or not you  
16 taped that conversation or that meeting?

17 A. Through the last six years that I was with New  
18 Philadelphia Police Department, I've made  
19 hundreds of arrests and on a portion of those,  
20 I've had tape recorders going while I'm  
21 interviewing people. For instance, DUI,  
22 asking them questions, that sort of thing. As  
23 well as conversations that I've had.

24 I was in the habit of coming home, if  
25 I had taped that conversation, I would pull



1           that tape out, throw it in a pile with  
2           others.

3                       I have got quite a few tapes and I  
4           haven't listened to 90 percent of them. Just  
5           probably ten or fifteen in the last few weeks,  
6           have I listened to, to find out what they  
7           pertain to, but it's possible, but I don't  
8           remember if I turned the tape record on that  
9           day or not.

10       Q.    You've been aware ever since the  
11           predisciplinary hearing held on August 28,  
12           2000, what the City was alleging regarding  
13           your untruthfulness in the August 4th meeting;  
14           is that correct?

15       A.    That's correct.

16       Q.    And you haven't gone back to check to see  
17           whether or not you taped that meeting?

18       A.    No, it's quite the opposite. I have gone  
19           back, but I've also got limited time. Like  
20           everyone else, I'm trying to survive.

21                       The Department fired me unjustly and  
22           as a result, I'm trying to make a living.  
23           I've got my own business. I'm working at  
24           that, which takes ten, twelve hours a day  
25           every day except Sundays.

1 I've gone through tapes, but keep in  
2 mind, those tapes can be as long as an hour  
3 and a half on each side. I have to sit there  
4 and listen to the whole thing.

5 I've gone through a handful of tapes  
6 coming up with traffic stops I've made years  
7 ago, that are no longer of interest. I can  
8 only do so much at a time. I've gone through  
9 looking, but I haven't finished yet.

10 Q. How much time have you spent looking for this  
11 tape?

12 A. I have no idea. Hours. I mean, I've listened  
13 to hours and hours of tapes, again, going back  
14 to traffic stops I made years ago.

15 Q. So you've listened to hours and hours of  
16 tapes, but as you sit here today, on May 3,  
17 2001, you've been unable to find the tape that  
18 you may have made at the August 4, 2000  
19 meeting with Safety Director Popham and Chief  
20 Staggers; is that correct?

21 A. I don't think you're stating it correctly. I  
22 don't know if I made a tape that night or  
23 not. I have no idea. I don't remember. One,  
24 it was nine, ten months ago.

25 Two, I carried my tape recorder

1       around with me all the time while I was on  
2       duty. It was in my pocket. It got to be on  
3       traffic stops as a natural instinct when I'd  
4       go up, "How you doing? Can I see your license  
5       and registration?" I'd reach up and turn the  
6       tape on. I have got so many tapes that I  
7       haven't listened to all of them.

8               The only way for me to find out if I  
9       have a tape of this conversation, is to listen  
10      to every single one to find out.

11             Unfortunately, I didn't mark them as  
12      I was pulling them out as to date, time or  
13      something like that, so, I, at this point,  
14      don't know. Did I look? Yes, I did look. I  
15      ran out of time.

16      Q.     Back on August the 31st -- or August the 28th,  
17              you knew that this would be an issue; is that  
18              correct? What was said at the August 4th  
19              meeting?

20      A.     I can't say I knew it was going to be an  
21              issue. I mean, what they're saying in the  
22              letter is not what actually happened, but I  
23              guess I knew it was going to be some sort of  
24              issue at one point or another, yes.

25      Q.     And it's now May --

1 THE ARBITRATOR: 3rd.

2 Q. Nine months later?

3 A. Yes.

4 Q. And you haven't found a tape that goes to the  
5 August 4th meeting; is that correct?

6 A. That's correct. It could be because it  
7 doesn't exist. It could be because I haven't  
8 come acrossed it yet.

9 As I said before, I don't know.

10 Q. Okay. What is your recollection of what was  
11 said at the August 4, 2000 meeting between you  
12 and Chief Staggers and Mr. Popham?

13 A. They called me into the office. I believe I  
14 had just come on duty that afternoon. I was  
15 on duty for a short period of time. I was  
16 called into the Chief's office and Greg Popham  
17 and Chief Staggers were standing there.

18 The Chief made a comment about  
19 waiting for something to come in and then they  
20 handed me the letter - which you got in front  
21 of you - I have to flip through the pile and  
22 find out which one it is.

23 MR. TSCHOLL: Thirteen.

24 A. Okay. They handed me Number 13 - which you've  
25 got listed here - and the Chief said, "Have

1           you ever used your position as a police  
2           officer in Internet radio sales?" And I  
3           said "No." Actually, I believe I said, "No,  
4           never."

5       Q.    And you say that the Chief asked you that?

6       A.    Yes.

7       Q.    Do you recall what Mr. Popham said, if  
8           anything?

9       A.    I don't remember what he said, if anything.

10      Q.    What else was discussed at that meeting that  
11           you can recall?

12      A.    It was stated - and I don't know which one  
13           stated it - but it was stated that BCI was  
14           going to be called in to investigate me for  
15           criminal activity involving radio sales of  
16           some sort, Lola, and that I was on  
17           administrative leave until further notice  
18           pending BCI conducting an investigation. That  
19           was pretty much the gist of the conversation.

20                   Jeff Urban took me home a short time  
21           later.

22      Q.    How long did this meeting last?

23      A.    It was only a minute or two. It wasn't very  
24           long.

25      Q.    Where did it occur?

1 A. Chief Staggers's office.

2 Q. Anybody present besides yourself and Mr.  
3 Popham and Chief Staggers?

4 A. No, I believe that was it.

5 Q. Mr. Cimperman, did you modify Rocky --

6 MR. PIOTROWSKI: Dusenberry.

7 Q. -- Dusenberry's City radio?

8 A. Did I modify it? No.

9 Q. Did you have it modified?

10 A. Yes.

11 Q. What was the reason that you had it modified?

12 A. Rocky asked me to have the scan opened up so  
13 that it scanned other channels besides the  
14 other two that were already scanning.

15 Q. And do you recall the reason that he asked you  
16 to do that?

17 A. Because he liked the ability to listen to  
18 other departments when necessary for officer  
19 safety and that sort of thing.

20 Q. Would you please turn to -- you're aware that  
21 Mr. Dusenberry has given a statement in this  
22 matter?

23 A. Yes.

24 Q. And would you turn to City Exhibit 17 please  
25 and review that statement if you haven't

1           already.

2       A.     Okay.

3       Q.     Is there anything untrue about that statement?

4       A.     You have to be a little more specific.  He's  
5           got dates and times and everything else, so  
6           what is the question exactly?

7       Q.     Is there anything untrue in this statement?

8                       MR. PIOTROWSKI:  I'm going to object  
9           and ask for clarification.

10      Q.     Is there anything in this statement that you  
11           take issue with that Mr. Dusenberry has  
12           stated?

13                    MR. PIOTROWSKI:  I'm going to object  
14           again.  He's been called on cross-examination  
15           here.  I think if Mr. Tscholl has a specific  
16           question as to whether or not it's true that  
17           three or four months ago or etc., that's fine,  
18           but general open-ended questions seem to be a  
19           little bit improper on a cross-examination  
20           especially this particular cross-examination.

21                    THE ARBITRATOR:  If the witness has  
22           completely digested this one-page document, I  
23           will permit -- and he feels comfortable  
24           understanding everything that's contained in  
25           it, I will permit the witness to answer,

1 generally, whether there are multiple-page  
2 documents that would require some study and  
3 analysis, I will sustain the objection and  
4 request specific inquiry. So I will rely on  
5 the Witness's statement that he fully  
6 understands what he's looking at is C -- I'm  
7 going to call this C17. And all these  
8 documents contained in the City's packet 1  
9 through 92, we'll call with a preface, "C" for  
10 the City.

11 THE WITNESS: All right. So first  
12 of all, there's -- you know, he uses words  
13 here that some of them I don't think he used  
14 at the time. There is discrepancies such as  
15 that.

16 He uses things like, "I asked how it  
17 was able to do that and he said he could make  
18 it happen." I'm not sure I said I "could make  
19 it happen," for instance.

20 He said I had to dig out my  
21 equipment. I don't recall saying that. I  
22 remember saying something about I will get  
23 back to him. I'll let him know.

24 He said a couple of days passed. I  
25 have no idea what kind of time frame we're



1           dealing with here.

2                   He said I gave him a different  
3           portable in return. That may be true. I  
4           can't say right now. I may have given him  
5           mine. I don't know.

6                   He said I didn't give him a reason  
7           during our conversation. I've got no way of  
8           knowing whether I did or didn't at the same  
9           time.

10                   Yeah, I gave him back his portable,  
11           that's true. I believe I showed him how the  
12           scanner worked. He claims a week later he was  
13           messing with the portable and a telephone  
14           number of the New Philadelphia Police  
15           Department came up. I don't have any idea  
16           about that. Okay. I answered that the best I  
17           could.

18           BY MR. TSCHOLL:

19           Q. Did you have authorization from any superior  
20           or anybody -- strike that.

21                   The radio that Officer Dusenberry  
22           gave you was a City radio?

23           A. I believe it was.

24           Q. And it was a portable radio?

25           A. Correct.

1 Q. As opposed to a mobile radio, which is found  
2 in a cruiser, correct?

3 A. Um-hum, correct. Excuse me.

4 Q. Did you have authority from anybody in the  
5 City to modify this radio?

6 A. I think you're misstating it. It's not  
7 necessarily a modification. It's something  
8 that the radio is able to do regardless. It's  
9 just a matter of, like in Windows, clicking a  
10 box or that sort of thing.

11 Did I have specific authorization to  
12 do something like that, no, I did not. I  
13 wasn't aware that anything like that was  
14 required. I haven't seen anything that says  
15 it is.

16 It was common practice for officers  
17 to - as you stated - modify the cruisers by  
18 adding brackets and phones and scanners and  
19 that sort of thing. And it was a commonly  
20 known authorization that people could do  
21 things like that to suit their specific  
22 equipment that they were using a little more  
23 closely and --

24 Q. Do things like what?

25 THE ARBITRATOR: Let him finish.

1                   Go on.

2       A.     For instance, installing scanners and  
3             installing cell phones and antennas. One guy  
4             didn't like the map light and removed the map  
5             light from his cruiser. That was Officer  
6             Hootman, I believe, that did that -- no,  
7             actually I take that back. That was Officer  
8             Risenger that replaced the map light a number  
9             of years ago.

10            I even asked Captain Calderon, back  
11            when I was patrolman, if it was all right to  
12            do stuff like that and he said, "Sure, I don't  
13            see why not." Now, I'm paraphrasing, of  
14            course, because that conversation was a number  
15            of years ago.

16       Q.     What specifically did you ask Captain Calderon  
17             to do that he approved?

18       A.     I just answered the question, which you just  
19             asked. I asked him if it was permissible to  
20             add stuff to the cars - because that's the  
21             issue that was at hand at that point - and he  
22             relayed - again, I can't remember the exact  
23             conversation, because this is quite a few  
24             years ago - about other people adding  
25             scanners, cell phones, antennas, you know, map

1 lights, or whatever. It was no big deal.

2 Q. What were you looking to add to your cruiser  
3 that you had this conversation with Captain  
4 Calderon?

5 A. I believe at that time it was a bracket for a  
6 cell phone, but I'm not 100 percent sure.  
7 Again, we're talking probably four or five  
8 years ago.

9 Q. A cell phone that would be City issued?

10 A. No.

11 Q. Your own personal cell phone?

12 A. Yes. The Captain's car has it in it. Quite a  
13 few of them do. Items like that.

14 Q. Do you know if adding a cell phone or changing  
15 a map light would create a substantial safety  
16 risk to an officer or a member of the New  
17 Philadelphia Police Department?

18 MR. PIOTROWSKI: I'm going to  
19 object. I believe "substantial safety risk"  
20 in this particular case is a term of art and  
21 Captain Cimperman is not -- there's been no  
22 basis given for his ability to interpret that  
23 term out of their policy manual.

24 THE ARBITRATOR: If he understands  
25 the question, I'll permit him to answer.

1 THE WITNESS: Again, I guess that  
2 comes out to point of view. For instance,  
3 there was an incident where I was involved in  
4 a crash and items went flying around the cabin  
5 hitting me in the face. So there's a  
6 possibility of a safety risk on almost  
7 anything to some extent.

8 Substantial, again, like my attorney  
9 said, I guess that's open for argument, but  
10 it's possible for someone to improperly  
11 install a bracket or something thereby coming  
12 loose at a bad time and causing injury, but I  
13 guess that's -- I don't know how else to  
14 answer that question.

15 BY MR. TSCHOLL:

16 Q. Just answer it the best you can.

17 A. I just did.

18 Q. What about a map light? Does that create a  
19 substantial safety risk by taking out a map  
20 light?

21 A. I don't believe so.

22 Q. You were also issued a City radio; is that  
23 correct?

24 A. Yes, I was.

25 Q. Portable radio?

1 A. Yes.

2 Q. Did you modify or make any changes to your own  
3 City-issued radio?

4 A. No, I did not.

5 Q. You did not?

6 A. No.

7 Q. Can you explain why your City-issued radio was  
8 not working when you turned it in after you  
9 were terminated shortly thereafter?

10 A. Actually --

11 MR. PIOTROWSKI: Objection. The  
12 facts are not in evidence. In fact, incorrect  
13 facts are not in evidence. The radio was  
14 taken back from him a substantial period of  
15 time before his termination.

16 THE ARBITRATOR: I think your  
17 objection goes to testimony, so --

18 MR. PIOTROWSKI: Bob said, you  
19 know, "When you turned your radio back in upon  
20 your termination, it didn't work."

21 THE ARBITRATOR: Again, if he doesn't  
22 understand that question, he can correct the  
23 question if he feels necessary to do so.

24 THE WITNESS: Okay. Can you  
25 restate the question, please?

1 BY MR. TSCHOLL:

2 Q. Let's take it a step at a time. I'm trying to  
3 get through this quickly, but I guess that's  
4 not going to be possible.

5 You were required to turn your own  
6 portable radio in; is that correct?

7 A. Yes, about a couple weeks after I filed my  
8 sexual harassment complaint, I was approached  
9 by, my then Captain, telling me that Captain  
10 Calderon - who was one of the parties involved  
11 in this investigation - wanted my radio, so I  
12 gave it to him.

13 Q. So that would have been sometime in May or  
14 June?

15 A. That sounds about right.

16 Q. And do you know what the condition of your  
17 radio was at the time you turned it in?

18 A. My understanding was that the battery was  
19 dead.

20 Q. The battery was dead. Do you know how the  
21 battery became dead?

22 A. Sure.

23 Q. Go ahead. How did it?

24 A. I bought my own portable probably about five,  
25 six months after I started in New

1 Philadelphia. And almost the entire time that  
2 I had that portable, it was sitting in a  
3 closet with my nightstick - the wooden one  
4 that they gave me that I never carried - my  
5 helmet - they issued a riot helmet that we  
6 never use - old uniforms. Those things.  
7 They've been sitting for years.

8 Q. Any other explanation as to why the battery  
9 was dead other than what you just testified  
10 to?

11 MR. PIOTROWSKI: Objection. Asked  
12 and answered.

13 THE ARBITRATOR: You can answer.

14 A. No, I don't know.

15 Q. How did you either directly or indirectly go  
16 about adapting or changing Officer  
17 Dusenberry's radio, portable radio?

18 A. The guy I had bought my radio from - a  
19 gentleman that lived in Columbus - I bought my  
20 radio from him. We conversed a number of  
21 times back and forth via Email. At one point  
22 he said he worked for a Motorola shop in  
23 Columbus somewhere, and he said he could do  
24 it. So I got ahold of him after Rocky asked  
25 me and asked him to do it.



1 Q. And what was involved in adapting or modifying  
2 Officer Dusenberry's radio?

3 A. It's not necessarily adapting. It's just  
4 changing a -- clicking a -- there's like a  
5 menu of some sort when they do that where they  
6 just "yes" or "no" kind of thing. Where, "Do  
7 you want it to do this?" "Yes" or "no"? That  
8 sort of thing.

9 So it's just where he hooks it up to  
10 some stuff and then hits a couple of buttons.

11 Q. Are you aware of any problems that were caused  
12 to Officer Dusenberry's radio as a result of  
13 this procedure that you were directly involved  
14 in?

15 A. I don't believe there were any problems caused  
16 as a result of that. I know of other problems  
17 that existed prior to this, but none that I'm  
18 aware of that were caused as a result.

19 Q. What car were you assigned to in August of the  
20 year 2000?

21 A. 621.

22 Q. Were you ever assigned to Car 24?

23 A. 024, yes, while I was patrolman.

24 Q. And did you do anything to modify the radio in  
25 Car 24?

1 A. Did I do anything? No.

2 Q. Did you have anything done by anybody else to  
3 modify the radio in Car 24?

4 A. The scan was enabled on that one.

5 THE ARBITRATOR: I'm sorry?

6 THE WITNESS: The scan.

7 THE ARBITRATOR: Was what?

8 THE WITNESS: Enabled.

9 Q. Was enabled?

10 A. Turned on.

11 Q. Oh. And who did that?

12 A. The same guy, Hemp.

13 Q. And when was that done?

14 A. I don't remember the date. It was some time  
15 ago. I don't remember. It was just a kind of  
16 coffee thing.

17 Q. Did he come up here to do it or did you take  
18 the car to Columbus?

19 A. No, he was here. He was coming back from  
20 Cleveland. He had a meeting in Cleveland and  
21 he was passing through and we sat and talked  
22 for awhile, had some coffee. Actually, had  
23 Pepsi, and started talking about the radios  
24 and he said he could do that one. And it took  
25 him all of 30 seconds.

1 Q. And did anybody from the City authorize you to  
2 make adaptations to the radio in Car 54?

3 THE ARBITRATOR: Twenty-four.

4 A. 024.

5 Q. Or 024?

6 A. Other than what I talked to with Captain  
7 Calderon, nothing other than that.

8 Q. And, again, this conversation with Captain  
9 Calderon occurred -- to the best of your  
10 recollection, when did this conversation  
11 occur?

12 A. Probably in '97 sometime; probably spring or  
13 summer.

14 Q. And how is it that you remember it was the  
15 spring or summer of 1997 that you had this  
16 conversation?

17 A. Because I remember that that conversation came  
18 up sometime prior to a crash that I had on  
19 duty one time. And I had just remembered when  
20 that date was and I know it was just a short  
21 time prior to that. That's how come I  
22 remember.

23 Q. Was that the crash when you were chasing the  
24 motorcycle?

25 A. Yes.

1 Q. Did you make modifications to any other  
2 City-issued radio, either a portable or a  
3 mobile radio, other than what you've just told  
4 me about?

5 A. No.

6 Q. So those were the three instances -- I'm  
7 sorry. Two instances. You testified you  
8 didn't modify your own City-issued radio?

9 A. That's correct.

10 Q. So only two times you've made modifications or  
11 caused modifications to be made; is that  
12 correct?

13 A. That would be correct.

14 Q. Are you aware at some point in time that  
15 Captain Calderon began investigating the fact  
16 that you had modified the radios?

17 A. I guess I became aware of it, but I was never  
18 notified. I was never officially notified of  
19 any of this.

20 In fact, sometime after all of this,  
21 I was told that officers were directly ordered  
22 not to even discuss this matter with me.

23 You know, I knew something was going  
24 on when he came and took my portable. I  
25 didn't know the gist of it, but subsequent to

1 all of this, you know, I found out Captain  
2 Calderon was looking into this.

3 Q. And, of course, you did talk to Captain  
4 Calderon about why he took your portable?

5 A. No, I don't think I talked to him about that.

6 Q. Is there a reason that you wouldn't have asked  
7 him?

8 A. Captain Calderon, for whatever reason, doesn't  
9 take a liking to me too much, so I don't  
10 really go out of my way to talk to him unless  
11 I have to.

12 I'm civil. But, obviously, the guy  
13 doesn't like me. Plus, this was just a short  
14 time after my sexual harassment complaint,  
15 which he was a major part of. And I didn't  
16 want to get involved in an issue like that.

17 I mean, he - at least in my mind -  
18 was out, like, on a witch hunt at that point,  
19 but I didn't see any reason to stir the pot,  
20 as it were. I just tried to avoid any  
21 conflict whatsoever.

22 Q. You mentioned this sexual harassment  
23 complaint. Why don't you tell me what that's  
24 all about.

25 A. Well, it's apparently Mike Henry - a former

1 officer, he's retired - made a picture, a  
2 pornographic picture, where they took just a  
3 generic photograph of me, took the face and  
4 placed that face onto the body of a black man  
5 with an erection not wearing clothes, laying  
6 on a couch.

7 This picture was then forwarded to  
8 Officer Hootman, who then brought it into the  
9 station. At some point during this, a  
10 dispatcher got ahold of it. The dispatcher  
11 then showed it to Captain Calderon, who  
12 apparently thought it was funny, also, but did  
13 nothing to stop it. And approximately a week  
14 later, this picture began passing around,  
15 including the Fire Chief seeing it. I've  
16 heard the Safety Director had seen it. Quite  
17 a few other officers, both male and female  
18 within the Department, had seen this picture.

19 I thought that that was extremely  
20 inappropriate and I filed a complaint about  
21 that.

22 Q. And what was done as a result of you filing a  
23 complaint?

24 A. To Captain Calderon, nothing. I think Hootman  
25 and Dusenberry were given a one-day

1 suspension. I don't know what happened to  
2 Mike Henry.

3 Q. And are you claiming that somehow Captain  
4 Calderon should have been disciplined as a  
5 result of this?

6 A. Well, it's a blatant violation of our Policies  
7 and Procedures. It specifically covers that  
8 kind of issue.

9 Q. And what did Captain Calderon do, in your  
10 opinion, to justify him being disciplined?

11 A. The only people that I'm aware of that had  
12 seen that picture prior to him seeing it and  
13 not taking action to stop it, which was done  
14 in the Department dispatch center. Most  
15 people had seen it after that, a week after  
16 that.

17 He had seen this a week before anyone  
18 else, other than possibly one or two people.  
19 And my impression is that he got some humor  
20 out of it and let it go. Didn't care. Didn't  
21 choose to stop it likes he's required to.

22 Our rules and regulations state that  
23 he's supposed to report this immediately and  
24 take action to stop it, which he did not.

25 Our rules and regulations -- or

1 policy, I should say. Policy specifically  
2 states that that is a major infraction for a  
3 supervisor warranting something more than it  
4 would be for the average patrolman.

5 Q. You said "your impression," what's your  
6 factual basis for the impression that you just  
7 testified?

8 MR. PIOTROWSKI: I'm going to  
9 object. In the interest of saving time, I  
10 think that he's clarified what his complaint  
11 was. I don't see the value in going into why  
12 he thought it was a violation of the policy.

13 We know that Captain Calderon is  
14 going to testify to and he can testify as to  
15 whether or not he, in fact, got any discipline  
16 out of this.

17 I just don't see any possible  
18 relevance to this line of questioning.

19 MR. TSCHOLL: Well, I believe it's  
20 relevant. The Union has claimed that there is  
21 some witch hunt, I believe, and they're  
22 claiming Calderon was part of it and this  
23 Witness is testifying that Calderon did  
24 nothing and he's got this impression. And I  
25 think it's certainly relevant to their claim



1           that this is a witch hunt.

2                   THE ARBITRATOR: I'll permit him to  
3           answer.

4                   Do you recall the question?

5                   THE WITNESS:       Refresh my memory on  
6           the question.

7           BY MR. TSCHOLL:

8       Q.    You stated that you had an impression that  
9           Calderon did nothing and, therefore, should  
10          have been disciplined?

11      A.    Okay. Well, he told me --

12                   THE ARBITRATOR: And you said it was  
13          an infraction of the rules and what do you  
14          base that on?

15                   THE WITNESS:       How do I base it as  
16          being an infraction?

17                   THE ARBITRATOR: No, I understood  
18          that part.

19                   THE WITNESS:       The Standards of  
20          Conduct blatantly say that that type of thing  
21          is a violation.

22                   Captain Calderon, while he was  
23          investigating, in his words, "Who,  
24          disseminator, past around this?" Stated to me  
25          himself that he had seen the picture.

1 I wasn't aware of this at that point  
2 I was under the impression, at that point,  
3 that the Friday that I became aware of it was  
4 the day that this picture came out.

5 It came out, at that time, I thought,  
6 during a retirement party for former Captain  
7 Hitchcock. During this conversation, he told  
8 me he had seen the picture a week before  
9 that. I says, "Really?" And he says, "Oh,  
10 yeah, I saw it a week before that." "What did  
11 you do about it?" He didn't say anything for a  
12 short period of time. He says, "Well, um,  
13 nothing."

14 "You didn't report it to anybody," I  
15 asked. "No. Who was I going to report it to?"

16 You know, that type of issue is  
17 covered in our Policy and Procedures where  
18 you're supposed to report it to a supervisor,  
19 which would be the Chief, of course. And he  
20 blatantly told me that he didn't do anything  
21 about it at that point.

22 Q. Do you have a tape recording of this  
23 conversation with Captain Calderon?

24 A. Yes, I do.

25 Q. You have a tape recording?

1 A. Yes, I do.

2 Q. Do you have that tape recording here?

3 A. No, it's at home. That was on a taped phone  
4 line at the Police Department where that  
5 conversation took place.

6 Q. Do you plan on using that tape recording in  
7 any legal action?

8 MR. PIOTROWSKI: Objection. Possible  
9 relevance? His use of the tape recording,  
10 especially if it's a public record, came off  
11 of the City's own tape recording system, is  
12 his own business and is completely unrelated  
13 to the charges for which he was fired.

14 THE ARBITRATOR: I'm inclined to  
15 agree with that, but I can be persuaded  
16 otherwise.

17 BY MR. TSCHOLL:

18 Q. Have you threatened to sue the City over this  
19 incident?

20 A. I'm not sure how to answer that. Have I  
21 talked to an attorney about this? Sure, I  
22 have. Especially after they fired me.

23 It was obvious in my mind that the  
24 minute I filed this complaint, it was a big  
25 to-do to discredit me. That's the rumors I'm

1 hearing from other officers in the  
2 Department. Of course, they're rumors, so I  
3 can't substantiate it and tell you what I've  
4 been hearing, but I have talked to an attorney  
5 about that.

6 My goal is not to sue the City. My  
7 goal is to get back to work as a Captain like  
8 I should have been all along.

9 My entire adult life I've spent going  
10 towards one goal, becoming the best police  
11 officer that I can and working my way up to  
12 Police Chief. That's all I've ever wanted out  
13 of life.

14 Did I want to sue the Police  
15 Department? No. I want my job back like I  
16 should have had the whole time.

17 Q. Well, the question was: Have you --

18 A. And I answered it the best I could, sir.

19 Q. Now, you received a statement of the charges  
20 from the Chief; is that correct -- strike  
21 that. Strike that.

22 At the meeting that you had with  
23 Safety Director Popham and Chief Staggers on  
24 August the 4th, did you tell them at that time  
25 that you were being represented by an

1 attorney?

2 A. Yes, I did.

3 Q. And if you would turn to City Exhibit 18,  
4 there's a photocopy from a card from a Laren  
5 E. Knoll. Do you see that?

6 A. Yes, I do.

7 Q. And was that the attorney that you told them  
8 that was representing you?

9 A. Yes.

10 Q. And when did you retain Attorney --

11 MR. PIOTROWSKI: Objection. Come on,  
12 Bob, you can't get into any conversations he  
13 had with his private attorney.

14 MR. TSCHOLL: Well, if you would  
15 let me ask the question. I wasn't asking  
16 about conversations --

17 MR. PIOTROWSKI: The question  
18 started: "When did you retain."

19 MR. TSCHOLL: That's an  
20 appropriate --

21 MR. PIOTROWSKI: It's an absolutely  
22 inappropriate question. The fact of retention  
23 of the attorney is just as much as a  
24 communication as, "I killed that person."

25 THE ARBITRATOR: I'm inclined to

1 agree with that. I'll sustain the objection.

2 MR. TSCHOLL: I wasn't asking  
3 about conversations. I asked when and I want  
4 to find out why he thought that he had to  
5 retain an attorney.

6 Apparently, prior to this time, he  
7 felt that there was something that he needed  
8 to retain an attorney, but I want to find out  
9 why it was he thought he needed to retain an  
10 attorney.

11 THE ARBITRATOR: Everybody has a  
12 right to retain an attorney at any time. I  
13 think the thought process and whether or not  
14 he felt he had to is irrelevant. I sustain  
15 the objection.

16 MR. TSCHOLL: Now --

17 THE ARBITRATOR: Spoken like a true  
18 lawyer, right?

19 BY MR. TSCHOLL:

20 Q. You received charges from Chief Staggers?

21 A. Is that a question?

22 Q. Yes.

23 A. I received the letter 8/4/00, which told me  
24 what they were supposedly investigating at  
25 that point. That was the only charge that I'm

1           aware that I ever received, other than, I  
2           think, it was the end of why I was terminated,  
3           that letter indicated what I was fired for.

4       Q.   Did you ever see a letter from Chief Staggers  
5           to an Attorney Hinig? And I would direct your  
6           attention to City Exhibit 38 and 39.

7       A.   I remember seeing this, yes.

8       Q.   Who Mr. Hinig?

9       A.   Hinig.

10      Q.   Hinig.

11      A.   Mr. Hinig is an attorney in New Philadelphia.

12      Q.   And was he representing you?

13      A.   When the Chief told me that I was being  
14           investigated by BCI, I asked Captain Urban for  
15           his recommendation and he suggested I go talk  
16           to Mr. Hinig to insure that things were done  
17           properly. So I did go and talk to Mr. Hinig.

18      Q.   And for purposes of the charges that the Chief  
19           made against you in late August, was Mr. Hinig  
20           your attorney?

21      A.   Well, you're giving me a date, but I'm not  
22           sure what you're talking about. What do you  
23           mean, "late August"?

24      Q.   This letter, City Exhibit 38 and 39, was sent  
25           to Mr. Hinig in late August.

1 A. I have no idea when that was sent. It's  
2 undated and I saw this thing sometime later  
3 when me and Mr. Hinig were discussing matters.

4 Q. Did you see this letter prior to August the  
5 31, 2000?

6 A. I believe I did, yes.

7 Q. And on August 31, 2000 you had a  
8 predisciplinary hearing; is that correct?

9 A. I thought it was the 30th, but that may be  
10 accurate.

11 Q. The letter by Chief Staggers indicates on  
12 City Exhibit 39, that a hearing was scheduled  
13 for Thursday, August 31, 2000 at 2:00 p.m. Do  
14 you see that?

15 A. Yes, I see that.

16 Q. Did that hearing take place at that date and  
17 time?

18 A. Yes, it did.

19 Q. And you were present with Attorney Hinig; is  
20 that correct?

21 A. Yes.

22 Q. And also present -- is it Hinig?

23 A. Hinig.

24 Q. Hinig. I'm sorry. And also present for the  
25 FOP was Charles Wilson. Do you recall that?



1 A. Yes.

2 Q. Who is Mr. Wilson?

3 A. He's one of the representatives from the FOP.

4 Q. And do you know what the purpose of the  
5 hearing on August the 31st was?

6 A. To fire me.

7 Q. And what's your factual basis for making that  
8 claim?

9 A. The City had already brought in the person to  
10 replace me that same day.

11 Q. And who was that?

12 A. I don't know the name. There were three  
13 openings within the Department. Two from  
14 retirement and the one I created and the same  
15 day, they hired the guy to replace me.

16 Q. And you don't know who that is?

17 A. No, I don't know his name, no.

18 Q. How did you learn that the City had hired  
19 somebody to replace you?

20 A. I saw the swearing-in ceremony among other  
21 things and I heard for some time that they  
22 were going to bring these three guys in. I  
23 don't have names, because I never met the  
24 guys. Actually, I think I met one at one  
25 point.

1 Q. You have the list of charges from Chief  
2 Staggers; is that correct?

3 A. You mean, that first letter where I was put on  
4 administrative leave?

5 Q. No, the letter that was sent to your  
6 Attorney.

7 A. You're talking about --

8 Q. Hinig?

9 A. Thirty-eight and --

10 Q. Thirty-eight and 39.

11 A. I believe that was in the packet of  
12 information, that's correct.

13 Q. And there was also other documents in there.  
14 Do you recall that?

15 A. Yes.

16 Q. And you reviewed those documents?

17 A. Yes, we looked over them.

18 Q. Now, at the meeting on August 31, 2000, you  
19 were offered an opportunity to respond to the  
20 charges in the documents; is that correct?

21 A. Yeah, you gave me an opportunity when you told  
22 me that if I didn't resign, they were going to  
23 charge me.

24 Q. Did you respond to the charges?

25 A. No. You told me that if I didn't resign, they

1           were going to charge me criminally. You,  
2           yourself, said that to me.

3       Q.    So you were provided an opportunity to respond  
4           to the charges and you did not respond?

5       A.    Yes, the attorneys and FOP representative said  
6           it was clear they were going to fire me  
7           regardless of the evidence and that since you  
8           guys were talking about charging me  
9           criminally, that it was best not to respond at  
10          that time.

11       Q.    Now, what is your version of what was asked on  
12           you August 4, 2000 regarding your dealings in  
13           the Internet, either by the Chief or the  
14           Safety Director?

15       A.    Chief Staggers said, "Have you ever used your  
16           position in Internet radio sales?" Those were  
17           his exact words.

18       Q.    Those were his exact words?

19       A.    That's what I remember. It was fairly  
20           traumatic. I was just put on suspension after  
21           making Captain. I would remember that  
22           conversation.

23       Q.    And what was your response?

24       A.    My response was no.

25       Q.    Now, you've got a web site, do you not, Mr.

1 Cimperman?

2 A. Not exactly.

3 Q. Turn to the next page 41.

4 A. Okay. It's not a web site, per se. There is  
5 space on my old Internet provider that I had  
6 put photographs on. It doesn't come up as a  
7 web site, per se.

8 You can click on individual lines on  
9 that and see the pictures that are stored  
10 there, but it is not a web site, per se, where  
11 you have visitors coming in and that sort of  
12 thing and navigate around.

13 Q. But anybody with information can download City  
14 41, City 42, City 43, City 44, City 45, City  
15 46, City 47, City 48, City 49, City 50, City  
16 51, 52, 53, and 54. Would that be an accurate  
17 statement?

18 A. If someone knew the web address and wanted to  
19 go there and download those pictures, they  
20 could, yes.

21 Q. Any member of the public?

22 A. Yes.

23 Q. And 41 is a picture of you; is it not?

24 A. Yes, it is.

25 Q. And you're in a police uniform -- it appears

1 to me that you're in a police uniform; is that  
2 correct?

3 A. That's correct.

4 Q. Now, what is 42 of?

5 MR. PIOTROWSKI: I object. Okay.  
6 We've established it came off a web storage  
7 site for Mr. Cimperman.

8 We've established he's got a picture  
9 of him in uniform on that storage site, but I  
10 have no idea what possible relevance pictures  
11 of radios can have to this case.

12 MR. TSCHOLL: Well, why don't you  
13 let me finish my line of questioning and then  
14 you may be able to figure it out.

15 MR. PIOTROWSKI: Because we've got 13  
16 of these that we can go through and discover  
17 they're pictures of Motorola and other brands  
18 of radios.

19 I'm going to object on relevance and  
20 this was not evidence that was presented or  
21 mentioned in any of the "charging sheets."

22 MR. TSCHOLL: May I respond?

23 THE ARBITRATOR: Yes, please.

24 MR. TSCHOLL: By his own  
25 testimony, it was his understanding from the

1 August 4th meeting in response to a question  
2 from the Chief, that he told the Chief he did  
3 not use his position as a police officer --

4 THE ARBITRATOR: So this is going  
5 into the issue of dishonesty? Is that what  
6 you --

7 MR. TSCHOLL: Yes.

8 THE ARBITRATOR: Okay.

9 MR. PIOTROWSKI: But, Your Honor,  
10 these are pictures. If you say, "Oh, you sent  
11 this picture to somebody to prove you were a  
12 cop," that's fine, but we don't have anything  
13 remotely resembling that alleged. This --

14 THE ARBITRATOR: Well, I'll entertain  
15 a motion to strike at the conclusion of this  
16 inquiry, but on his representation that this  
17 will be tied in, I'll permit the questions to  
18 be asked.

19 The question relates to C42?

20 MR. TSCHOLL: Thank you. C42.

21 BY MR. TSCHOLL:

22 Q. What does that depict?

23 A. C42 through C50 are various Motorola radios.  
24 One is an encryption device. I think there's  
25 a charger in here, various communication

1 equipment that I have sold over the years.

2 Q. And you were selling these over the Internet?

3 A. That would be correct; Ebay.

4 Q. How is it then when you - by your own  
5 testimony - told Chief Staggers that you were  
6 not using your position as a police officer  
7 with your Internet sales, that you could make  
8 that claim based upon reviewing C41, which has  
9 a picture of you as a police officer?

10 A. Because you're changing everything around.  
11 What you're saying is not even close to being  
12 accurate, sir.

13 Q. Well, why don't you tell us what --

14 A. I'd be more than happy to, sir.

15 When you sell something on Ebay.  
16 Okay? You register with Ebay. You have the  
17 option of attaching photographs to your  
18 auctions. Okay? You have to have a place for  
19 this photograph to be stored. On your web  
20 site, would be the normal thing. Okay?

21 What you do is, you include the exact  
22 address for that photograph. For instance, it  
23 may say something:

24 Like, "www.\tusco.net\myname\123.jpeg" and  
25 that photograph alone would show up on the

1 auction. Nothing else.

2 If someone wanted to do some serious  
3 research, they could find pictures from the  
4 New Philadelphia Police Department just like  
5 they do anything else.

6 But my picture did not appear on any  
7 web site. It was simply a storage. I had the  
8 picture scanned in at the Police Department  
9 when they first put them up on the web site,  
10 and I attached it to my web site, so that I  
11 could have a copy of it. I sent one to my  
12 mother. I sent one to my sister. I think I  
13 even sent one to my father.

14 That picture doesn't appear on any  
15 web site, per se. It's nothing more than --  
16 no one goes on my web site - as you call it -  
17 trying to get photographs or trying to buy  
18 things. No one logs into my site. It doesn't  
19 happen that way. It was simply a place to  
20 store the pictures so when they were displayed  
21 on something such as Ebay, it would show the  
22 picture that I attached, which would be a  
23 radio in that particular sale and the radio  
24 only.

25 Q. So even with the evidence that the City has



1 produced here in 41 through 45, it's your --  
2 through --

3 THE ARBITRATOR: Fifty-three.

4 Q. -- through 53, it's your contention that you  
5 were not using your position as a City of New  
6 Philadelphia Police Officer for your Internet  
7 sales?

8 MR. PIOTROWSKI: I'm going to object.

9 THE ARBITRATOR: Basis?

10 MR. PIOTROWSKI: We are suddenly in  
11 the realm of him having to prove he didn't do  
12 something wrong, when Bob hasn't even managed  
13 to assert that he did something wrong with  
14 this web site.

15 THE ARBITRATOR: I'll permit the  
16 question.

17 THE WITNESS: No.

18 BY MR. TSCHOLL:

19 Q. No?

20 A. No, I did not use my position.

21 Q. Okay. Now, who is this Lola Arrendondo?

22 A. Lola is a friend of mine.

23 Q. Are you dating her?

24 A. Nope. Never dated her. She's just a friend.

25 Q. And how did you come to know her?

1 A. I don't know. It's been a few years. I met  
2 her -- she used to work over at Don Poncho's.  
3 I met her there.

4 Q. And what was the nature of this friendship?

5 A. We were friends.

6 Q. How did it happen that -- strike that.

7 I'm handing you what's been marked as  
8 City Exhibit 93. Mr. Cimperman, can you  
9 identify this document?

10 A. It's a photocopy of a check, the back of the  
11 check and the deposit ticket.

12 Q. Going to the deposit ticket, does the deposit  
13 ticket indicate the date that it was  
14 deposited?

15 A. I'm sure it does, but I'm going to have to  
16 look closely here to see the date.

17 Q. It may help you to look at the back of the  
18 check.

19 A. 6/26/00, which is what is indicated on the  
20 back of the check.

21 Q. Who is the maker of the check?

22 A. It looks to be signed by Rubin Arrendondo.

23 Q. And who is he?

24 A. It's my understanding that he's the father of  
25 Lola.

1 Q. And why was it that Rubin Arrendondo sent you  
2 a check for \$300?

3 A. Lola was in school in Alliance at this point.  
4 We were talking back and forth on Instant  
5 Messenger usually every week, maybe every  
6 other week, depending. She was telling me how  
7 she was doing in school. At that point, she  
8 told me that she had been arrested by the New  
9 Philadelphia Police Department for shoplifting  
10 over at the mall.

11 I called her an "idiot," among other  
12 things. I told her she should have known  
13 better. She talked about what was going to  
14 happen to her and she said that she had  
15 community service, fines and that sort of  
16 thing.

17 And during this conversation, she  
18 said she wasn't sure what she was going to be  
19 able to do about it. I told her she needed to  
20 make sure she got in and took care of  
21 community service and that sort of thing and  
22 to stay out of trouble.

23 During this conversation, she talked  
24 about the fact that she was in school, paying  
25 her way through school, and didn't have the

1 money to pay for the fines. I loaned her \$30  
2 to pay her fines.

3 Probably a week, a week and a half  
4 later, maybe a little later I'm not sure of  
5 exact dates, we had another Instant Message  
6 conversation that lasted about a half hour or  
7 so. During this conversation, she mentioned  
8 that she had just sent a check to me and she  
9 wanted me to pay the rest of her fines.

10 The next day, I believe it may have  
11 been, the check actually arrived. She had  
12 told me during this conversation, the Instant  
13 Message conversation, that her dad had loaned  
14 her the money to pay the rest of the fines.

15 Q. In this Insta -- is it "Insta"?

16 A. Instant.

17 Q. Instant Message, did she tell you what the  
18 amount of the fines were?

19 A. I'm not sure she said the exact amount. She  
20 did say roughly \$300. It's my understanding  
21 that 298 was the exact amount.

22 Q. And she told you that she was sending you this  
23 money for what purpose?

24 A. She wanted me to pay the fines for her.

25 Q. And in June of 2000, it's your understanding

1           that she was in school in Alliance?

2       A.    She was in school in Alliance when we had the  
3           first conversation, then she went on vacation,  
4           summer break, and went to Texas where her  
5           father lives and spent time with her father  
6           and that's the point where she sent the  
7           check.

8                       Her father has Internet service at  
9           his house also. And she logged onto Instant  
10          Messenger and we had this conversation. She  
11          saw me online and we talked back and forth.

12       Q.   And do you know if she is living in Texas now?

13       A.   No, she went to school. She's in Tennessee.  
14          She transferred to Tennessee, I believe. She  
15          transferred from the school in Alliance to the  
16          one in Tennessee.

17       Q.   She's no longer living in New Philadelphia?

18       A.   No.

19       Q.   And she hasn't lived in New Philadelphia since  
20          she moved to Texas back in June of 2000?

21       A.   I don't think she actually moved to Texas. I  
22          think she was in school in Alliance and then  
23          she went to Texas to stay with her father over  
24          the summer and then transferred from the  
25          Alliance school to the Tennessee school where

1 she is still in school now.

2 Q. So she's been out of state since June of 2000  
3 permanently?

4 A. I think she was back in town visiting her mom  
5 at one point. I don't know the date, but for  
6 the most part, she's been out of the state.

7 Q. Her permanent residence since June of 2000 has  
8 been out of Ohio?

9 MR. PIOTROWSKI: Objection.

10 THE ARBITRATOR: Go head.

11 A. I'm not sure. I mean, that's my  
12 understanding. I thought she was in school.  
13 She had lived in New Philly for a while and  
14 went to Alliance where she went to school,  
15 visited her father in Texas and is now in  
16 school in Tennessee. That's the only  
17 understanding that I have of her residence.

18 Q. And this money that she sent you was for  
19 paying her fines?

20 A. She asked me to pay the fines, yes.

21 Q. And on June 26th, you deposited this money  
22 into your account?

23 A. Yes, 26th.

24 Q. And you did not pay the fine?

25 A. Yes, I did pay the fine.

1 Q. You paid the fine when?

2 A. Approximately 30 days later.

3 Q. What was the purpose in depositing this money  
4 into your account, as opposed to just  
5 endorsing the check over to the courts?

6 A. I couldn't imagine the courts taking a  
7 second-party check.

8 Q. You're a police officer.

9 A. What's that got to do with anything?

10 Q. Do the courts know you?

11 A. Now you're telling me I should use my position  
12 to get them to take the check?

13 Q. No, I'm asking questions, Mr. Cimperman.

14 MR. PIOTROWSKI: What's the  
15 question?

16 Q. Do you understand the question?

17 MR. PIOTROWSKI: Objection. I don't  
18 understand the question.

19 THE ARBITRATOR: Do you want the  
20 question read back or do you want to rephrase?

21 MR. TSCHOLL: No, that's okay.

22 BY MR. TSCHOLL:

23 Q. What was the purpose of depositing this check  
24 into your account?

25 A. The check was made out to me. She sent it to

1 me. I didn't ask her to, but she asked me to  
2 take care of -- do a favor for her, take the  
3 money and pay her fines, which I did.

4 It was made out to me. I stuck it in  
5 my account and waited for it to clear. A  
6 couple of weeks later - I just forgot about  
7 it - she called me and reminded me about it  
8 and I'm like, "Oh, shoot. You're right. I'm  
9 sorry." And I got up right then and went and  
10 paid the fine.

11 Q. A couple of weeks you say?

12 A. That was my intention to put it in for a  
13 couple of weeks to clear. I just forgot about  
14 it as I stated.

15 Q. And it's your understanding that it takes a  
16 couple of weeks for a check to clear?

17 A. I have no idea what it takes for a check to  
18 clear. I didn't really sit down and think  
19 about it to figure out exactly how long I had  
20 to wait, but I just put it in the bank and  
21 figured I'd take care of it a week or two down  
22 the road. I didn't consider it a major issue  
23 at that point.

24 Q. And why didn't you take care of it a week or  
25 two down the road?



1 A. Just like I said, I forgot about it.

2 Q. Isn't it true that you were having financial  
3 problems at this time?

4 A. No, I don't believe so.

5 Q. During this period of time, you were operating  
6 a business in New Philadelphia, correct?

7 A. No.

8 Q. You were not?

9 A. No. The business had been done. It was three  
10 partners, myself and two others, but that was  
11 a year and a half earlier. Oh, yeah the  
12 business was only in business for a year and a  
13 half. It was done by '96. That's, you know,  
14 four years before this.

15 Q. Your business that was in New Philadelphia was  
16 done in 1996?

17 A. I believe it was. Yeah, it was closed years  
18 before this.

19 Q. And you were sued as a result of some debts  
20 that you had?

21 A. No, sir, I was not.

22 Q. You were not sued?

23 A. No, sir.

24 Q. Who was your landlord?

25 A. For?

1 Q. Your business?

2 A. I believe that was Michael Johnson.

3 Q. Michael Johnson's the Law Director for the  
4 City of New Philadelphia; is that correct?

5 A. That's correct.

6 Q. And isn't it a fact that you never paid your  
7 rent?

8 MR. PIOTROWSKI: Objection. This  
9 relates to the misconduct how?

10 THE ARBITRATOR: May we have a time?

11 MR. TSCHOLL: Well, I believe the  
12 time was when he closed his business, whenever  
13 that was, so --

14 MR. PIOTROWSKI: 1996.

15 THE ARBITRATOR: This is '96. This  
16 is not in 2000?

17 MR. TSCHOLL: He's saying now it's  
18 1996, but I don't believe that's the case. I  
19 just want to get his rendition of the facts  
20 before we proceed.

21 MR. PIOTROWSKI: We're back in the  
22 realm of uncharged misconduct.

23 THE ARBITRATOR: The thrust of this  
24 questioning began with financial  
25 difficulties. I think Counsel is exploring

1           that area.

2                   Again, if this does not fall into the  
3 predicate to this line of questioning, I will  
4 entertain a motion to strike.

5           MR. PIOTROWSKI: Mr. Arbitrator,  
6 wouldn't the predicate be that there be some  
7 relationship between the time of Mr. Johnson's  
8 issue and the time of this check being  
9 deposited?

10           THE ARBITRATOR: I agree.

11           MR. PIOTROWSKI: We haven't  
12 established that.

13           MR. TSCHOLL: And I agree with  
14 that, too.

15           THE ARBITRATOR: Then go ahead. Your  
16 question?

17           BY MR. TSCHOLL:

18   Q.   So it's your understanding that the business  
19 closed in 1996?

20   A.   The business was opened a year and a half. We  
21 opened it a short time after I became a  
22 patrolman. I was there for just over a year.  
23 So it was open for a year and a half. That  
24 would be late '96, possibly.

25           We opened up in July. July 1st was

1 the date we opened the store.

2 MR. PIOTROWSKI: Of?

3 THE WITNESS: Give me a second.

4 I'm thinking. I believe it was '95. And it  
5 was opened for a year and a half, because we  
6 closed, I believe, it was in December. A year  
7 and a half after we opened up. So if it  
8 opened in '95, we're talking about,  
9 what? '96/'97?

10 You're claiming I was financially  
11 hurt. If you take a look at the deposit slip,  
12 not only did I put \$200 cash in my account at  
13 that point along with her check, that wasn't  
14 an issue.

15 THE ARBITRATOR: I have difficulty  
16 reading that.

17 THE WITNESS: We've got the  
18 original somewhere, don't we? As far as any  
19 bills, my partner, Bob Pervis, has all the  
20 business records. So I'm sure we can dig up  
21 anything. If anyone sued us, it's without my  
22 knowledge and he would most certainly know  
23 about it. He was the one that handled most of  
24 the finances.

25 It was the three of us involved in

1           that business; Larry Bell, Robert Pervis and  
2           myself. Again, that was many years ago.

3           BY MR. TSCHOLL:

4           Q.    So, once again, your explanation for why you  
5                didn't pay the fines that you were entrusted  
6                to by Lola, was that you merely forgot about  
7                it after you deposited this in your account?

8           A.    You said the reason I didn't, but I did pay  
9                the fine. I had forgotten about it for a  
10               period of time; a fairly short period of  
11               time. She called me and reminded about it. I  
12               apologized that I had forgotten. I got up  
13               right then, which was about 10:00 in the  
14               morning and went straight up to the bank and  
15               took the money out and took it over to the  
16               courthouse.

17          Q.    And you're saying that your recollection of  
18                why you did that is because she, Lola,  
19                contacted you and asked you why you hadn't  
20                paid it; is that correct?

21          A.    She asked me if I did pay it and I said, "Oh,  
22                shoot, I'm sorry. I forgot." Actually, I  
23                didn't have a conversation with her. She left  
24                that message on my voice mail. When I got my  
25                voice mail message, after my pager went off, I

1 realized that I had forgotten about it, jumped  
2 right up and took care of it and then later  
3 that day, we had a conversation.

4 Q. Did you have a conversation with anybody about  
5 the payment of this fine that you can recall?

6 A. Yes.

7 Q. Who?

8 A. The one of the bailiffs in court when I came  
9 in to work that afternoon.

10 Q. Wendy Jones?

11 A. Yes.

12 Q. And do you recall when you had that  
13 conversation?

14 A. About 2:30, 3:00, maybe a little later. I  
15 think she was leaving work, so it may have  
16 been as late as 4:00.

17 Q. Do you recall the date you had that  
18 conversation?

19 A. Not the specific date. It was the same day  
20 that I made the payment on the fines. It was  
21 that evening.

22 Q. And I'll direct your attention, Mr. Cimperman,  
23 to City Exhibit 36 and 37.

24 A. Right.

25 Q. I'll direct your attention to the last

1 paragraph on page 36. Ms. Jones states  
2 that, "On July the 27, 2000 approximately  
3 4:30, I was leaving work and had seen Officer  
4 Cimperman going into the police department. I  
5 called him and asked him if Lola had contacted  
6 him. He stated she had left a message for him  
7 on his phone and that she had contacted him a  
8 couple weeks before to remind him about the  
9 money and that she had sent him the check for  
10 \$300 a while ago." Do you see that?

11 A. Yes.

12 Q. Okay. Now, Ms. Jones states that you told her  
13 that Lola had contacted you a couple weeks  
14 before this and reminded you again.

15 A. Okay.

16 Q. Is that true? Had she called you a couple of  
17 weeks prior to July 27th and reminded you to  
18 pay the money?

19 A. We've had conversations on and off the whole  
20 time. I don't remember her reminding me about  
21 that specific issue. We talked about it.  
22 When she sent it, we discussed it. And at one  
23 point during that, we talked about it. I told  
24 her I had just deposited the check. What the  
25 time frame was, I don't know.

1 Q. I want you to be very clear on this. Okay?  
2 So if you don't understand it, please let me  
3 know.

4 In Ms. Jones's statement, she says  
5 that you told her that Lola had contacted you  
6 and, again, a couple weeks before, to remind  
7 you about the money. That's what Ms. Jones is  
8 claiming you told her.

9 A. Okay.

10 Q. Do you recall telling her that?

11 A. No, I don't.

12 Q. Well, if Lola contacted you a couple weeks  
13 before July 27th and reminded you about the  
14 money and you did not pay it, do you have a  
15 reason why you wouldn't have paid it when  
16 she --

17 MR. PIOTROWSKI: Objection. It calls  
18 for pure speculation.

19 THE ARBITRATOR: I'll sustain the  
20 objection.

21 Q. Thank you, Mr. Cimperman, I have no further  
22 questions.

23 THE ARBITRATOR: Do you have any  
24 Direct at this time or are you going to  
25 reserve it for later?



1 MR. PIOTROWSKI: I'm going to ask a  
2 couple of quick questions.

3 THE ARBITRATOR: All right.

4 DIRECT EXAMINATION

5 BY MR. PIOTROWSKI:

6 Q. Captain Cimperman, please turn to page 29 of  
7 the City's Exhibit packet.

8 A. Okay.

9 Q. Can you tell me what that sheet is?

10 A. This is a letter to the Chief of Police, Chief  
11 Tom --

12 MR. TSCHOLL: He says 29?

13 A. My mistake. I'm sorry.

14 This appears to be a printout showing  
15 some information about Lola relating to her  
16 case in the Clerk of Court's office.

17 Q. As a police officer, are you familiar with  
18 this particular type of printout?

19 A. I've seen them before, yeah.

20 Q. And this comes from who?

21 A. It would be the Clerk of Court's office for  
22 the City of New Philadelphia.

23 Q. Okay. And if you go to page 2, that's a  
24 continuation of that printout, right?

25 A. Yes.

1 Q. And do you see the date at the top of that?

2 A. Yes.

3 Q. And the 7/28/00, that refers to the date that  
4 this printout was done?

5 A. I think so.

6 Q. Okay. How much money remains to be paid  
7 according to this printout on 7/28/00?

8 A. \$328.

9 Q. What does it say for balance due?

10 A. Oh, I'm sorry. Balance due, zero. Zero. I'm  
11 sorry. I'm looking at the original one, the  
12 total.

13 Q. And "paid to date," how much has been paid on  
14 7/28/00?

15 A. 328.

16 Q. Okay. How much was received today on 7/28/00?

17 A. The amount that was paid is 328.

18 Q. Right, but the "received today," the column  
19 that refers to --

20 A. Oh, nothing.

21 Q. Okay.

22 A. It's open.

23 Q. Now, the money has all been paid on the 28th  
24 of July?

25 A. Right.

1 Q. And none was received "today" the 28th of  
2 July. We have to assume that all the money  
3 has been paid by the 27th of July, right?

4 A. That would make sense.

5 Q. Now, flip to 36.

6 A. Okay.

7 Q. That is the statement from Ms. Jones, right?

8 A. Correct.

9 Q. Now, she states that on 7/27 the fine hadn't  
10 been paid, doesn't she?

11 A. That's what she says.

12 Q. Now, Ms. Jones would have to be lying if the  
13 previous court document were correct, wouldn't  
14 she?

15 A. She's either lying or mistaken.

16 Q. So she may be mistaken as to the dates of what  
17 occurred here, or she may have been mistaken  
18 as to what was said, right?

19 A. Correct.

20 Q. Do you think it's likely that she maliciously  
21 told a lie about you trying to get you in  
22 trouble?

23 MR. TSCHOLL: Objection.

24 THE ARBITRATOR: I'll sustain the  
25 objection.

1 THE WITNESS: No.

2 MR. PIOTROWSKI: Okay. I have no  
3 further questions at this time.

4 THE ARBITRATOR: Next witness?

5 (A brief recess was had.)

6 THE ARBITRATOR: Would you swear the  
7 Witness in, please?

8 WHEREUPON,

9 ROCKY L. DUSENBERRY

10 who, being first duly sworn, testified as  
11 follows:

12 THE ARBITRATOR: Your name,  
13 sir?

14 THE WITNESS: Rocky Dusenberry.

15 THE ARBITRATOR: You may proceed.

16 MR. TSCHOLL: Thank you.

17 DIRECT EXAMINATION

18 BY MR. TSCHOLL:

19 Q. Officer Dusenberry, are you employed?

20 A. Yes, I am.

21 Q. By whom are you employed?

22 A. City of New Philadelphia Police Department.

23 Q. And how long have you been employed by the  
24 City of New Philadelphia Police Department?

25 A. Almost three years.

1 Q. Officer Dusenberry, did there come a point in  
2 time when your radio became modified or  
3 adapted by Mr. Cimperman?

4 A. Yes.

5 Q. And could you describe how that came to be?

6 A. I gave him my portable radio and got it back  
7 and it was different. It was changed.

8 Q. How? What were the circumstances that caused  
9 you to give him your portable radio?

10 A. I was riding with him one day and I overheard  
11 his radio scanning different departments and I  
12 asked how that was, how it was like that and  
13 he said that he could make my mine do the same  
14 thing.

15 Q. And you gave him your radio then?

16 A. Right. He asked -- he said he would get his  
17 stuff and then I would give him my radio.

18 Q. And then did you get your radio back?

19 A. Yeah, I think the next day after I gave it to  
20 him.

21 Q. And was your radio changed?

22 A. Yes.

23 Q. And how was it changed?

24 A. It was set to scan any channel in it that I  
25 wanted to make it scan by hitting buttons on

1 the radio itself. There was a paging system  
2 in it and then I found later there was a phone  
3 in it.

4 Q. A phone in it?

5 A. Right.

6 Q. How did you find later that there was a phone  
7 in it?

8 A. Just, actually, fiddling with it. I hit the  
9 right button and there it was. The phone  
10 number said New Philly Police and a 448  
11 number.

12 Q. Did you ever make a phone call on that phone?

13 A. I did once. One for a split-second right,  
14 basically, when I found it. I kind of  
15 wondered how it worked and I hit "go" or  
16 whatever it says on the panel whenever you do  
17 it and it started ringing. The dispatcher  
18 picked it up and I said a couple words and  
19 hung up.

20 Q. Did there come a point in time when you ever  
21 past on this information to any member of  
22 supervision in the New Philly Police  
23 Department?

24 A. Yes, Captain Calderon.

25 Q. And what happened that caused to you advise

1 Captain Calderon of the modification of your  
2 portable?

3 A. At the time we were in a conference or,  
4 whatever, for a disciplinary thing of my own  
5 that had to do with Dave.

6 THE ARBITRATOR: A disciplinary  
7 conference that had to do with what?

8 THE WITNESS: Say again?

9 THE ARBITRATOR: You said you were in  
10 a disciplinary conference that had to do  
11 with --

12 THE WITNESS: With another  
13 incident that had to do with Dave.

14 MR. PIOTROWSKI: Can we clarify  
15 whether or not this was the picture incident  
16 we talked about earlier?

17 MR. TSCHOLL: I was just going to  
18 get into that. Sure.

19 BY MR. TSCHOLL:

20 Q. What was the nature of that disciplinary  
21 conference?

22 A. It was in reference to the picture incident  
23 where I showed the picture around to people of  
24 Dave.

25 Q. And which is the picture that's been

1 previously described in this arbitration as  
2 Dave Cimperman's face interposed over a naked  
3 body?

4 A. Correct.

5 Q. And what was Captain Calderon doing with  
6 respect to you at this time?

7 A. As far as the picture dealing?

8 Q. As far as the discipline?

9 A. At that point it was more of, "How did this  
10 happen?" It was a question thing --  
11 questioning and I think he was still gathering  
12 information of how it got to where it was at.

13 Q. So he was investigating that?

14 A. Right.

15 Q. Was any action taken against you as a result  
16 of this investigation?

17 A. Yes, I was suspended for one day.

18 Q. And how was it that you told Captain Calderon  
19 about the radio modification?

20 A. Basically I just told him, you know, "People  
21 who live in glass houses shouldn't throw  
22 stones," and I was kind of mad and told him  
23 about it.

24 Q. And what were you upset about?

25 A. That I was getting in trouble for something



1           that shouldn't -- I don't feel we should have  
2           ever got in trouble for.

3       Q.    What did you tell Captain Calderon about this  
4           radio modification?

5       A.    That mine had been changed and the one in car  
6           024 had been changed.

7       Q.    And who did you tell him made this change?

8       A.    Cimperman, David.

9       Q.    What else did you tell Captain Calderon about  
10          the changing of the radio?

11      A.    That mine is actually wrong. It wasn't  
12          changed correctly or it wasn't -- something  
13          didn't work -- some things didn't work in it  
14          correctly.

15      Q.    And what was it that wasn't working correctly?

16      A.    It was the fire department channel, is the  
17          only thing I knew at the time that wasn't  
18          working right.

19      Q.    And did that concern you?

20      A.    Yes.

21      Q.    And why did that concern you?

22      A.    Because I couldn't talk to them if I needed  
23          to. If I needed to get on my radio and tell  
24          them of anything, I wouldn't be able to,  
25          because they wouldn't be able to hear me.

1 Q. And did that ever happen?

2 A. Yes.

3 Q. And describe what happened.

4 A. If I recall, it was -- I'm almost sure there  
5 was a fire. I was on my way to that, because  
6 we usually get there before they do and I went  
7 on the radio to click to their channel, went  
8 on the radio and said, "There's smoke showing  
9 in a building." I don't remember where it was  
10 at. It's been a long time ago, but there was  
11 a reason I had to get on there and tell them  
12 something and, apparently, they didn't hear  
13 me.

14 Q. Apparently they didn't hear you?


15 A. That's when I figured out I didn't hear them  
16 talking at all. I stayed on their channel and  
17 I never heard anything, no traffic at all from  
18 them, which I should have been hearing because  
19 they were on their way.

20 Q. And did you report this -- other than telling  
21 Captain Calderon -- did you report this to  
22 Calderon -- how soon after you found out did  
23 you report this to Calderon?

24 A. It wasn't right away. I was kind of -- I  
25 really didn't want to get anybody involved,

1       you know, I just tried to -- I wasn't going to  
2       do anything. I was just going to let Dave try  
3       to fix it instead of getting anybody in  
4       trouble. So I kind of hem-hawed around with  
5       it for awhile trying to figure out what to do,  
6       because it's altered wrong.

7       Q.   At some point in time, did you come to learn  
8       that there was a problem with altering the  
9       radio?

10      A.   Yeah. Initially, I didn't think it was that  
11      big of a deal to make them scan. I thought  
12      maybe it was like a switch you flip or   
13      whatever. Then I come to find out that  
14      there's equipment involved. It's a big  
15      computer thing or something.

16      Q.   How did you find that out?

17      A.   Actually, Kenny, the guy that works for  
18      Staley's, I asked him about it and that's when  
19      he said it's pretty -- it's not easy to do and  
20      that was about it. Then I realized it wasn't  
21      real -- it wasn't an easy thing and --

22      Q.   When you asked Mr. Cimperman to modify your  
23      radio, did you have any knowledge about the  
24      propriety of the request at that time?

25      A.   I don't understand "propriety."

1 Q. "Propriety" means whether it was okay or not  
2 okay?

3 A. No, I thought it was just a feature that was  
4 in the radio and mine just wasn't enabled. I  
5 thought maybe you just flicked a switch to  
6 make it do something. I didn't know it was a  
7 big programming thing. I just assumed it was  
8 something you can make them all do by hitting  
9 the right buttons or whatever.

10 Q. And what did Captain Calderon say to you  
11 regarding you having Mr. Cimperman modify your  
12 radio?

13 A. Oh, he screamed and hollered and gave me --  
14 yelled at me for a really long time. Saying I  
15 shouldn't, you know -- basically, he let me  
16 have it. Just because he knew I shouldn't  
17 have been doing that.

18 Q. Now, did you give a statement regarding this  
19 matter?

20 A. Yes.

21 Q. And I'll refer you to page 17 of the  
22 witness -- or do you have the statement there?

23 A. Yes, I have my own. The same one. Same one  
24 you have.

25 Q. And I would ask you to review City Exhibit 17

1           and when you're done reviewing it, if you will  
2           let me know, please.

3       A.    I know what's in it.

4       Q.    Is this statement an accurate statement  
5           regarding the events involving the  
6           modification of your hand-held radio?

7       A.    Yes.

8       Q.    Is there anything that you would choose to  
9           add, correct, amend or clarify to this  
10          statement today?

11      A.    No.

12      Q.    I have no further questions.

13                   THE ARBITRATOR:   I have a quick one.  
14           You said you were unable to communicate with  
15           the fire department, was that on your portable  
16           phone?

17                   THE WITNESS:       On my portable  
18           radio?

19                   THE ARBITRATOR:   Yes.

20                   THE WITNESS:       Correct.

21                   THE ARBITRATOR:   You have a car?

22                   THE WITNESS:       Correct.

23                   THE ARBITRATOR:   Do you have a car  
24           radio phone?

25                   MR. PIOTROWSKI:   Mobile.

1 THE WITNESS: In the car itself?

2 THE ARBITRATOR: Yes.

3 THE WITNESS: Yes.

4 MR. TSCHOLL: That's prompted one  
5 follow-up, if I may?

6 THE ARBITRATOR: Absolutely.

7 BY MR. TSCHOLL:

8 Q. Kenny, who works for Staley's -- what's  
9 Staley's?

10 A. It's the company that does our radios. They  
11 take care of everything and if I can clarify  
12 myself on the first question?

13 THE ARBITRATOR: Sure, but I think  
14 counsel will do that for you, but you  
15 certainly may. And Kenny works, not for the  
16 Police Department, he works for Staley's?

17 THE WITNESS: Right, he's hired  
18 through us to do our stuff.

19 BY MR. TSCHOLL:

20 Q. Are there circumstances, situations where you  
21 only have your portable radio to rely upon?

22 A. Yes, that's what I wanted to say. In this  
23 situation, I got out of the car and continued  
24 to talk and wasn't hearing.

25 Q. So you did not have access to your mobile

1 radio?

2 A. Initially, when I was coming down to it, I was  
3 on my portable and then I got out of the car  
4 and continued to talk to them, so I thought,  
5 and I didn't.

6 Q. Okay. That's all I have.

7 THE ARBITRATOR: Thank you.

8 Cross?

9 CROSS-EXAMINATION

10 BY MR. PIOTROWSKI:

11 Q. Now, during your meeting with Lieutenant  
12 Calderon, you stated that people in glass  
13 houses shouldn't throw stones, so you knew at  
14 that point that there was something wrong with  
15 adding the page function and the scan function  
16 to the radios?

17 A. Yes.

18 Q. Okay. Was that an understanding that  
19 developed after it had been done or did you  
20 pretty much know you shouldn't have done it to  
21 begin with?

22 A. Initially it was -- I thought it was an easy  
23 thing to do. It wasn't that big of a deal,  
24 and then as I learned that all these other  
25 features were in it, I realized it probably

1           wasn't a smart idea to have it done.

2       Q.    So it takes some effort to add these things?

3       A.    Yeah.

4       Q.    It takes some skill, some software you  
5           understand?

6       A.    Yeah, I don't know, but from what all I'm  
7           gathering, yeah, it must.

8       Q.    Pretty unlikely that somebody's going to do it  
9           accidentally, right?

10      A.    Yes.

11      Q.    Okay. Did Captain Cimperman ever tell you  
12           that he activated some kind of phone function  
13           in your portable?

14      A.    No.

15      Q.    Now, he told you about everything else, didn't  
16           he?

17      A.    The little pager thing in it.

18      Q.    And the scanner function. He showed you how  
19           to work the scanner function?

20      A.    Yes.

21      Q.    But he didn't tell you anything about the  
22           phone patch?

23      A.    I don't think. I don't remember. I remember  
24           when I found it, it was like I didn't  
25           realize -- I didn't know how it worked or



1 anything.

2 Q. Okay. Is it possible that the phone patch was  
3 there prior to him monkeying with your radio,  
4 if you want to call it that?

5 A. Sure. It's possible.

6 Q. Okay. The statement, we're calling it  
7 Exhibit 17, City Exhibit 17, when exactly did  
8 you prepare this; do you recall?

9 A. Yeah, I would say in June, roughly.

10 Q. Early June? Late June?

11 A. I would say maybe -- I don't know. I'm going  
12 to say early June, because I don't know for  
13 sure. Right when it all started. Right at  
14 the time of the incident of the -- you know  
15 when the incident of the picture and all that  
16 was.

17 Q. Okay.

18 A. Somewhere in that general --

19 Q. Now, I've got a memo from Officer Cimperman to  
20 Chief Staggers dated May 10th. And it's  
21 talking about Captain Calderon investigating  
22 the picture incident.

23 A. Okay.

24 Q. So maybe it was early May then that you wrote  
25 this statement?

1 A. It would have been in that time frame. I  
2 would say late May, early June. Right at the  
3 same time even for that matter.

4 Q. Okay. Now, do you recall when the incident  
5 with the fire department occurred?

6 A. Sometime in the time it was done, until then.  
7 Before the statement. Before I wrote the  
8 statement.

9 Q. Okay. Did you know when you talked to  
10 Calderon, that your fire department channel  
11 wasn't working?

12 A. At that -- whenever I spoke to him, yes.

13 Q. Okay. So it was sometime prior to mid May?

14 A. That what?

15 Q. That you found out that the fire department  
16 phone didn't work?

17 A. The fire department channel?

18 Q. Right; the fire department channel didn't  
19 work.

20 A. Right. It had been like that for two months  
21 at the time. My radio had been changed that  
22 long roughly.

23 Q. And did you ever talk to Captain Cimperman and  
24 say, "Hey, my fire department channel isn't  
25 working. We need to get this fixed"?

1 A. You know, I think I did, but we never got  
2 around to doing anything about it. I'm not  
3 sure if I did or not, but I think I did.

4 Q. Now, at some point you became aware from Kenny  
5 that this is complicated. Did you ever ask  
6 Kenny to fix your portable?

7 A. No, I didn't, basically, let him know it was  
8 changed. I just asked, "Do you want to change  
9 my radio?" And he's like, "No, I can't do  
10 that." That's when I realized that it must  
11 have been a pretty big deal.

12 Q. Do you remember approximately when, monthwise,  
13 the radio was actually changed?

14 A. According to this, I put on here, on my  
15 statement, "three to four months ago," and if  
16 I wrote this in June, that makes it about  
17 March, I guess. And that's a really rough  
18 guess.

19 Q. Okay. So it could have been February. It  
20 could have been April?

21 A. Yeah, I'm not positive, datewise, to say  
22 definitely.

23 Q. Did you actually see Captain Cimperman do  
24 anything to your portable?

25 A. No, I didn't.

- 1 Q. How about to the radio in Car 24?
- 2 A. No.
- 3 Q. And Car 24, was that assigned solely to
- 4 Captain Cimperman?
- 5 A. Him and two people, no.
- 6 Q. So there were two other people assigned to
- 7 that car?
- 8 A. Usually one per shift.
- 9 Q. Okay. So they all would have known that Car 24
- 10 had the scan function?
- 11 A. Not necessarily, unless they were told or they
- 12 accidentally hit the button or purposely hit
- 13 the button to see if it was there.
- 14 Q. Okay. So they might have been unaware that it
- 15 had a scan phone?
- 16 A. Right.
- 17 Q. Do you know of any shortcomings of Car 24's
- 18 radio with the fire channel or anything like
- 19 that?
- 20 A. Not that I'm aware of. At that point I was an
- 21 extra body and I jumped from car to car to
- 22 car. If I didn't have my own car to ride, I
- 23 would have been dealing with that one all the
- 24 time.
- 25 Q. Okay. During your own disciplinary

1 conference, you began talking about the  
2 complainant basically, Captain Cimperman, or  
3 at that point, Officer Cimperman's behavior,  
4 right?

5 A. While I was in my disciplinary conference?

6 Q. Right, Calderon was asking you questions at  
7 your own disciplinary investigation about him?

8 A. Yeah, in the end it ended up being my  
9 disciplinary thing, but it was a question -- I  
10 mean, he was questioning me at that point,  
11 about how this picture got to the station, you  
12 know, yeah.

13 Q. And then you made the "glass house" statement  
14 and then you started this conversation about  
15 the radios?

16 A. I just brought it up and let him do with it  
17 what he will.

18 Q. Did you have a feeling as to whether or not  
19 Captain Calderon was friendly towards Officer  
20 Cimperman?

21 A. As far as not -- you mean at that point or,  
22 whatever, in general?

23 Q. Just in general all the time?

24 A. I guess. I guess they got along, I don't  
25 know. I don't know.

1 Q. Okay. Now, as a result of this radio change,  
2 did you receive any discipline?

3 A. A verbal --

4 Q. Hollering or whatever?

5 A. Yeah.

6 Q. Reaming?

7 A. Yeah, big time.

8 Q. But nothing under the Collective Bargaining  
9 Agreement or anything like that?

10 A. What do you mean by that?

11 Q. Under the Collective Bargaining Agreement,  
12 because of people like me, if you get a verbal  
13 reprimand, they write down that I gave you a  
14 verbal reprimand.

15 A. I don't know if it's in my file. It very well  
16 may be.

17 Q. But you never received a copy or anything like  
18 that?

19 A. No.

20 Q. Are you familiar with the North Police  
21 channel?

22 A. Yes.

23 Q. Now, is that a channel that should be  
24 available to all the police officers in the  
25 City of New Philadelphia?

1 A. Should it be?

2 Q. Yes.

3 A. Yeah.

4 Q. Is it, to your knowledge?

5 A. Don't know.

6 Q. Have there been problems in the past with the  
7 North Police being available to everybody?

8 A. You know, I've never even got on there to try  
9 to call anybody. You know what? Yeah,  
10 because that's what Strasburg's on, if I  
11 recall right, and at one time we couldn't call  
12 Strasburg.

13 Q. Was that everybody that you recall?

14 A. Don't know.

15 Q. Now, has your portable ever been taken from  
16 you to modify it to allow it to get these  
17 necessary channels? I mean, have they ever  
18 upgraded the software or anything like that?

19 A. You mean, like Staley's.

20 Q. Yeah.

21 A. No.

22 Q. Now, when you talked to Kenny at Staley's, did  
23 anything other than software have to be added  
24 to the portable to get all these functions or  
25 was it just programming?

1 A. Like, what did he tell me?

2 Q. Yeah.

3 A. We didn't even get into what it takes. He  
4 just, basically, said it's pretty expensive  
5 and he ain't allowed to do it for me. If I  
6 were a Captain or a Chief, he would be able to  
7 do it, but me being a patrolman, he wasn't  
8 allowed to then, you know --

9 Q. Okay. Do you know of any other police  
10 officers who have the phone patch in their  
11 portable?

12 A. Yeah, my understanding is that two of the  
13 people in the department with older radios  
14 have it.

15 Q. Who are they?

16 A. Henry, and Shawn Nelson.

17 THE ARBITRATOR: Could you spell  
18 those for the court reporter?

19 THE WITNESS: Nelson, do you want  
20 first and last?

21 THE ARBITRATOR: Just the last.

22 THE WITNESS: Okay. Nelson and  
23 Henry.

24 Q. And do you know if there have ever been any  
25 accusations that Captain Cimperman modified



1           their radios?

2       A.   Not that I'm aware of.  It was never brought  
3       up.

4       Q.   Thank you, Officer Dusenberry.

5                   THE ARBITRATOR:  Anything further?

6                   MR. PIOTROWSKI:  No.

7                   THE ARBITRATOR:  Next witness?

8                   MR. TSCHOLL:       Wendy Jones.

9                   (A brief recess was had.)

10                   THE ARBITRATOR:  Will you swear in  
11       the witness, please.

12       WHEREUPON,

13                               WENDY JONES

14       who, being first duly sworn, testified as  
15       follows:

16                   THE ARBITRATOR:       Your name,  
17       please?

18                   THE WITNESS:        Wendy Jones.

19                   THE ARBITRATOR:  You may go ahead.

20                   MR. TSCHOLL:        Thank you.

21                               DIRECT EXAMINATION

22       BY MR. TSCHOLL:

23       Q.   Good afternoon, Wendy?

24       A.   Hi.

25       Q.   Would you please tell us whether you are

1           employed?

2       A.     Yes, I am.

3       Q.     And by whom are you employed?

4       A.     Municipal Court New Philadelphia.

5       Q.     How long have you been employed?

6       A.     Since April of 1998.

7       Q.     And what is your position?

8       A.     I'm a bailiff and probation officer.

9       Q.     Do you recall an individual by the name of  
10           Lola Arrendondo?

11      A.     Yes, I do.

12      Q.     And did there come a point in time when Ms.  
13           Arrendondo had a problem with the court  
14           system?

15      A.     Yes.

16      Q.     And what do you recall of that problem?

17      A.     She had a theft charge through our court,  
18           which she was placed on probation for.

19      Q.     And who was her probation officer?

20      A.     Kyle Cartwright.

21                   THE ARBITRATOR:   I'm sorry?

22                   THE WITNESS:       Kyle Cartwright.

23      Q.     And as a result of the probation violation, do  
24           you know if Mr. Cartwright took any action?

25      A.     Yes, he filed a motion to provoke her

1           probation.

2       Q.    Okay.  And there should be a witness list of  
3           exhibits.  There should be one  
4           labeled "Witness."  I had one.

5                   Wendy, will you please turn to the  
6           exhibit marked 31?

7       A.    (Witness complies with request.)

8       Q.    And can you identify this document?

9       A.    Yes, this is our motion to revoke that we use  
10           for probation.

11      Q.    Do you know why Mr. Cart filed this motion to  
12           revoke?

13                   MR. PIOTROWSKI:  Objection.  I'll  
14           withdraw the objection.

15                   THE ARBITRATOR:  I would ordinarily  
16           sustain the objection, but since you've  
17           withdrawn it, I'm grateful for it.

18      Q.    Thank you.  I'm trying to expedite this  
19           thing.

20                   Go ahead.  You may answer the  
21           question.

22      A.    He was filing a motion because she failed to  
23           pay probation fees, failed to pay fines and  
24           court costs and she received another similar  
25           charge in Stark County.

1 Q. And did you become involved in this matter?

2 A. Yes, I did.

3 Q. And how did you become involved?

4 A. Lola called me and wanted to speak with Kyle,  
5 actually, but Kyle was not in the office and  
6 so she spoke with me in reference to this  
7 motion filed against her.

8 Q. So she had received this motion?

9 A. Yes.

10 Q. And what did she say to you?

11 A. That she had paid the fines and court costs  
12 and probation fees and that the theft  
13 charge -- and I guess it was in Massillon  
14 Municipal Court, that it happened before this  
15 incident that we had a probation for. And I  
16 stated to her that the computer did not say  
17 that her fines and court costs were paid and  
18 that her probation was not paid except for a  
19 \$30 payment.

20 Q. And did she respond to that?

21 A. Yeah, she told me -- she asked me if I knew  
22 Officer Dave Cimperman from the police  
23 department and I said, yes, I did. She stated  
24 she had sent him the money to pay for her.

25 Q. And what happened after that?

1 A. You mean, later that day or as far as her --

2 Q. You know, what day are we talking about?

3 A. The day I spoke with her, I believe it was the  
4 28th of July.

5 Q. Did you prepare a statement regarding --

6 A. Yes, I did.

7 Q. -- your involvement in this matter?

8 A. Yes, I did.

9 Q. And can you tell me the circumstances that  
10 caused you to prepare a statement?

11 A. I just was requested to fill out a statement  
12 due to the fact that this motion was filed  
13 and, I guess, it was due to the circumstances  
14 later that day that they asked me to fill one  
15 out.

16 Q. Do you know who asked you to prepare this  
17 statement?

18 A. I think it was Officer Hootman who spoke to me  
19 later that day.

20 THE ARBITRATOR: Officer who?

21 THE WITNESS: Officer Larry  
22 Hootman.

23 Q. Wendy, I want to direct your attention to  
24 City Exhibit 36 and 37. Can you identify  
25 City Exhibit 36 and 37?

1 A. This is a statement that I wrote.

2 Q. In response to Sergeant -- or Mr. Hootman's  
3 request -- Officer Hootman's request?

4 A. Yes.

5 Q. Would you please take a moment and review this  
6 statement?

7 A. Okay.

8 Q. Now, after you received this telephone call  
9 from Ms. Arrendondo, did you discuss this  
10 matter with anybody after that?

11 A. Yeah.

12 Q. And who did you discuss it with?

13 A. Dave Cimperman.

14 Q. And can you tell me the circumstances that you  
15 came to discuss this with Mr. Cimperman?

16 A. It was after work. I was walking to the back  
17 lot, to the parking lot, to my vehicle in the  
18 parking lot and Officer Cimperman was, I  
19 believe, either getting in his cruiser or  
20 getting out of his cruiser. He was back in  
21 the cruiser area and I just yelled over to  
22 him.

23 Q. You knew Mr. Cimperman?

24 A. Yeah.

25 Q. And how did you know Mr. Cimperman?

1 A. Just from being around the police force and I  
2 was an auxiliary police officer.

3 Q. You are an auxiliary police officer?

4 A. Yes.

5 Q. And continue please.

6 A. I explained to him that I talked to Lola  
7 Arrendondo and she had stated that she sent  
8 him money to pay a fine and court costs and  
9 probation fees for her. He stated to me that,  
10 yeah, she had sent him a check a while ago and  
11 that he had put it in his account and forgot  
12 about it, but he would be up to take care of  
13 it.

14 Q. Now, take a look at your statement. Does this  
15 statement indicate the date that you became  
16 involved in this matter?

17 A. Yes, it was July 27th of 2000.

18 Q. Okay. How soon after your conversation with  
19 Mr. Cimperman did you fill out this statement;  
20 do you know?

21 A. I'm not really sure. It wasn't very long.

22 Q. So there wasn't --

23 A. There was no big time span. It was within a  
24 week, I would say.

25 Q. Go down to the next to the last paragraph,

1 Wendy.

2 A. Okay.

3 Q. It says there on July 27, 2000 at  
4 approximately 4:30, "I was leaving work and  
5 had seen Officer Cimperman going in the police  
6 station. I called for him and asked if Lola  
7 contacted him. He stated that he left a  
8 message -- that she had left a message for him  
9 on his phone and that she had contacted him a  
10 couple of weeks before to remind him about the  
11 money and that she had sent him this check for  
12 \$300." Do you see that?

13 A. Um-hum.

14 Q. Now, do recall Mr. Cimperman telling you that?

15 A. Yeah, I would have wrote exactly what was said  
16 during that conversation.

17 Q. Okay. Now, do you have any problems with Mr.  
18 Cimperman?

19 A. No.

20 Q. Have you ever had any dealings with Mr.  
21 Cimperman?

22 A. No.

23 Q. Do you have any reason not to give anything  
24 but the truth regarding the statement that Mr.  
25 Cimperman -- the remarks in this exhibit that



1           you've attributed to Mr. Cimperman?

2       A.    No.

3       Q.    Now, turn to City Exhibit 35.

4       A.    Okay.

5       Q.    Can you identify this document?

6       A.    This would be a printout from the court saying  
7            what happened in the case as things were  
8            docketed.

9       Q.    Did this document indicate when money was paid  
10            on Ms. Arrendondo's court fees?

11      A.    Yes, it does.

12      Q.    Can you point out to the Arbitrator where that  
13            is on this document?

14      A.    That would be where it says, "July 28th," the  
15            very last part of it.

16      Q.    So there was money paid on July 28th?

17      A.    Yes.

18      Q.    And does it indicate how much money was paid  
19            on July 28th?

20      A.    Yes, it shows receipt number 9327106 in the  
21            amount of 148. That went toward the fines and  
22            court costs and then the monthly probation fee  
23            was paid, 150, receipt 9327107.

24      Q.    Do you have personal knowledge that those  
25            amounts were paid on that date?

1 A. That would have been -- I personally did not  
2 accept that, but the clerks put in the date  
3 they take the money.

4 Q. So this is a document that is kept in the  
5 ordinary course of business?

6 A. This comes from the computer, yes.

7 Q. Thanks, Wendy. I have no further questions.

8 THE ARBITRATOR: Cross-examination?

9 CROSS-EXAMINATION

10 BY MR. PIOTROWSKI:

11 Q. Go back to 29.

12 A. Okay.

13 Q. What's that?

14 A. That is also a computer printout.

15 Q. From the case docket system?

16 A. I'm not sure actually which. The docket  
17 system is what I just went through. Actually,  
18 I think this is a printout of the screen, I  
19 believe. I don't know. I didn't print it  
20 out.

21 Q. But it's part of the same integrated system?

22 A. Yeah.

23 Q. Now, if you flip to page 2 of that, which is  
24 C30, and you go to the bottom section. At the  
25 time that this was printed out, do you know

1           how much money was owed?

2       A.    Nothing.

3       Q.    Okay.  And do you know how much money had been  
4           received on the day that this was printed out?

5       A.    Could I tell how -- no.

6       Q.    If you go down to this column, the big blank  
7           section on the right at the bottom, doesn't it  
8           say "RCD today"?

9       A.    What are you looking at?

10      Q.    Above "balance due."

11      A.    That means -- yeah, that means how much paid  
12           today, I think.

13      Q.    Now, on 7/28 when this was printed out, no  
14           money had been received today, right?  So  
15           either the docket is wrong or this is wrong,  
16           right?

17      A.    I can't answer that, because --

18      Q.    Well, do you agree with me that this says, "no  
19           money received"?

20      A.    This says "no money," but I don't take money,  
21           so I don't know how it's entered in there.

22      Q.    Now, your first statement under Direct  
23           Examination was that you had talked to Dave in  
24           the parking lot and he said, "Yes, I got a  
25           check from Lola and I didn't pay it.  I'll do

1           it right away," right?

2       A.    That's summarizing, yes.

3       Q.    Okay. Now, on further examination and after  
4           Mr. Tscholl pointed out to you that your  
5           statement said he had claimed to have been  
6           earlier reminded of paying this, now, which is  
7           accurate?

8       A.    What I wrote in the statement.

9       Q.    Okay. How soon after, in days, did you write  
10          this statement?

11      A.    Like I said before, I don't recall. I'm --

12      Q.    You're a trained police officer, aren't you?

13      A.    I've been through school, yes.

14      Q.    You wear a uniform and carry a gun?

15      A.    Part time, yeah.

16      Q.    Why isn't your report dated?

17      A.    What do you mean, "Why isn't my report dated"?

18      Q.    There is no date on this report. Isn't it  
19          normal for you --

20      A.    I believe it's dated. The date that  
21          everything happened as far as when I talked to  
22          them, is dated.

23      Q.    But you don't date your name and you don't  
24          give us a time when it was completed. Isn't  
25          that normal procedure to give a date when

1           you've completed the report?

2       A.    Personally, myself, I'm a reserve and an  
3           auxiliary officer --

4       Q.    You don't date reports?

5       A.    No, I don't.

6       Q.    Okay. How did Larry Hootman become aware of  
7           this incident?

8       A.    Because I spoke with Larry Hootman, because I  
9           was at the park working one day and me and him  
10          were talking about it.

11      Q.    Okay. How did this particular subject come  
12          up?

13      A.    We were just talking about Dave.

14      Q.    Did you say something like, "Dave Cimperman's  
15          gone and got somebody else in trouble again"?

16      A.    No.

17      Q.    So if Larry Hootman put that in a report, he'd  
18          be lying?

19      A.    I don't believe I said that to Larry.

20      Q.    But you could have?

21      A.    I could have. I can't say what I said to  
22          someone.

23      Q.    Okay.

24      A.    I mean, this has been a year ago almost.

25      Q.    Okay. Now, I'm going to show you what we're

1 going to mark as Union Exhibit 1.

2 THE ARBITRATOR: Why don't we do  
3 this: Off the record.

4 (Discussion held off record.)

5 BY MR. TSCHOLL:

6 Q. Now, if you go down to the final paragraph --

7 A. Okay.

8 Q. -- it says, "On July 31st, Wendy Jones was at  
9 the police station and told me that Cimperman  
10 just got someone else in trouble again."

11 A. Okay.

12 Q. Now, that would be contradictory to your  
13 statement that this occurred at the park job,  
14 right?

15 A. If I talked to Mr. Hootman at the station, I  
16 don't remember doing it. I know we did have a  
17 conversation at the park though.

18 Q. Okay. Now, did Lola tell you that she had  
19 paid the money to Cimperman for him to come in  
20 and pay it to the court?

21 A. She stated she had sent him the money to come  
22 in here and pay her probation fees and fines  
23 and court costs.

24 Q. Was it her understanding by giving the money  
25 to him she had completed everything --

1 MR. TSCHOLL: Objection as to "her  
2 understanding."

3 THE ARBITRATOR: I'll sustain the  
4 objection.

5 Q. Okay. You told her that this was something  
6 that she had to clear up with Officer  
7 Cimperman, didn't you?

8 A. Yes, I did.

9 Q. Because if she said, "I sent the money to my  
10 lawyer," you'd say, "You're going to have to  
11 clear that up with your lawyer, you've got to  
12 give it to the court," and she knew that,  
13 didn't she? She didn't argue with you there?

14 MR. TSCHOLL: Objection as to what  
15 she knew.

16 THE ARBITRATOR: Sustained.

17 Q. She didn't argue with you about whether or not  
18 that she had actually paid it to the court,  
19 did she?

20 A. No.

21 Q. Did she tell you that because she gave it to a  
22 police officer, that she felt she had paid off  
23 her fees?

24 A. She never stated that, no.

25 Q. She understood that Dave had to bring the

1 money in for her. He was doing her a favor?

2 MR. TSCHOLL: Objection as to what  
3 she understood.

4 THE ARBITRATOR: Yeah, you guys,  
5 stick with what she said.

6 Q. Okay. She stated and intimated to you, that  
7 she was aware that Officer Cimperman had to  
8 take another action, come in and pay the money  
9 to the court, right?

10 A. I think she stated to me that she had paid him  
11 the money to pay her fines and court costs and  
12 probation fees. That's all she stated to me.

13 Q. Okay. Now, was it strictly the failure to pay  
14 the fines that had landed Lola Arrendondo in  
15 this predicament?

16 A. No, not just the money issue. It was about  
17 the Massillon theft charge also.

18 Q. Okay. What's your relationship with Officer  
19 Hootman? Friends?

20 A. Yeah.

21 Q. Coworkers?

22 A. I guess you could say that.

23 Q. Is it better or worse than your relationship  
24 with Officer Cimperman?

25 A. Probably better, but I don't have a bad



1 relationship with Dave either.

2 Q. How is Officer Hootman's relationship with  
3 Officer Cimperman, if you know?

4 A. As far as I know, probably not very good.

5 Q. Did you expect your statements to Officer  
6 Hootman to result in a formal investigation?

7 A. I didn't really know where they would go.

8 Q. Were you talking to Officer Hootman in an  
9 attempt to get the department to address this  
10 issue, or were you just telling him something  
11 that had happened?

12 A. Just normal day conversation.

13 Q. If you were aware of actual misconduct by a  
14 police officer, who would you report it to at  
15 the Police Department?

16 A. Chief Staggers.

17 THE ARBITRATOR: Who?

18 MR. PIOTROWSKI: Chief Staggers.

19 I have no further questions. Thank  
20 you.

21 THE ARBITRATOR: Any redirect?

22 MR. TSCHOLL: No redirect. Thank  
23 you, Wendy.

24 THE ARBITRATOR: Next witness?

25 MR. TSCHOLL: Next witness, Mr.

1           Kenny Howell.

2                   THE ARBITRATOR: Before you sit down,  
3           sir, this young lady is going to swear you  
4           in.

5           WHEREUPON,

6                           KENNY HOWELL

7           who, being first duly sworn, testified as  
8           follows:

9                   THE ARBITRATOR: Your name is Kenny  
10          Howell?

11                   THE WITNESS:        Yes.

12                   THE ARBITRATOR: You may inquire.

13                           DIRECT EXAMINATION

14                   BY MR. TSCHOLL:

15          Q.       Thank you.

16                   Kenny, are you employed?

17          A.       Yes, I am.

18          Q.       By whom are you employed?

19          A.       Staley's Technologies.

20          Q.       What does Staley's -- what line of business is  
21                   Staley's in?

22          A.       Two-way radios.

23          Q.       And does Staley's have a business relationship  
24                   with the City of New Philadelphia?

25          A.       Yes, we do.

1 Q. And what does Staley's do for The City of New  
2 Philadelphia?

3 A. Maintain the radios and the lights and sirens  
4 on the cruisers.

5 Q. And what types of radios do you maintain for  
6 the City of New Philadelphia?

7 A. What brand?

8 Q. No -- okay. What brand?

9 A. Motorola.

10 Q. What different kinds of radios does the City  
11 have?

12 A. Oh, handhelds and mobile units and any base  
13 unit, I should say.

14 Q. And how long has Staley's been doing business  
15 with the City?

16 A. I've been employed there ten years and we've  
17 done business with them since I've worked  
18 there.

19 Q. Okay. And you testified you maintain and what  
20 else do you do for the City?

21 A. The lights and sirens and cruisers themselves.

22 Q. What is your job title?

23 A. Technician.

24 Q. And what type of training do you have?

25 A. Oh, electronics. I have an Associate's

1 Degree.

2 Q. And you have an Associate's in --

3 A. In electronic engineering, yes.

4 Q. What types of technical things do you do for  
5 the City with the radios? Do you understand  
6 the question?

7 A. Not really.

8 Q. I'm sorry. It wasn't a very good question.

9 In terms of maintaining the City's  
10 radios, can you tell me some of the activities  
11 that you would engage in?

12 A. Programming the units. Repairing the units.  
13 Just making sure they operate properly.

14 Q. And how do you know when to engage in these  
15 activities?

16 A. Usually it's just when they stop working or  
17 have a problem communicating.

18 Q. Who is your contact person with the City?

19 A. With the police or --

20 Q. With the Police Department?

21 A. Chief Staggers.

22 Q. And so the Chief gives you your assignments  
23 for the most part?

24 A. He will or one of the Captains will.

25 Q. Okay.

1 A. Yes.

2 Q. Have you ever gotten an assignment from a  
3 patrol officer?

4 A. They may stop in occasionally and say, "Hey,  
5 I'm having a problem with my lights or siren,"  
6 or something like that, you know. If we have  
7 time, we work on it, if not, we schedule it.

8 Q. Do you know Captain Calderon?

9 A. Yes.

10 Q. And how long have you known Captain Calderon?

11 A. Probably as long as I've worked with the  
12 company.

13 Q. And have you had contact with Captain Calderon  
14 regarding radios and communication equipment  
15 for the City?

16 A. Yes.

17 Q. Going back to the year 2000. Do you recall  
18 having contact with Captain Calderon regarding  
19 any radios that were modified or adapted?

20 A. Yes.

21 Q. And what do you recall about that contact that  
22 you had with Captain Calderon?

23 A. He come in in one of the cruisers and called  
24 me out to the car and pressed a button and  
25 said, "Now watch this. Is that something you

1 did to this car?" And I said, "No." And I  
2 believe it was just the car at the time.

3 Q. Do you remember which car it was?

4 A. Car 24.

5 Q. Car 024?

6 A. Yeah.

7 Q. And how do you know it was Car 024?

8 A. It's clearly marked on the car.

9 Q. And do you recall approximately the month that  
10 you had this contact with Captain Calderon?

11 A. Not really, you know, spring.

12 Q. So his question to you involved Car 24 and  
13 whether or not you had done a modification?

14 A. Right.

15 Q. What was modified on Car 24?

16 THE ARBITRATOR: Pardon me. Is this  
17 spring 2000 or --

18 THE WITNESS: I'm sorry. 2000.

19 THE ARBITRATOR: Thank you.

20 A. There's a button on there that says, "Scan."  
21 It has a scan list in it and it also had a  
22 phone list in it, which means you could make  
23 outgoing phone calls from the car through the  
24 radio.

25 Q. This is a mobile unit?

1 A. Correct, yes.

2 Q. Do any of the other police cars have that  
3 feature on their mobile?

4 A. Not to my knowledge, no, they don't. When we  
5 put the radios in the cars, they never had  
6 that feature.

7 Q. So this car had two features that were not  
8 present in the other cruisers that you were  
9 aware of?

10 A. Right.

11 Q. And that's the scan feature and the phone  
12 feature?

13 A. Yes.

14 Q. And what was involved in this phone feature?

15 A. It would operate the same as a home  
16 telephone. You would just select the number  
17 you wanted to -- the numbers were programmed  
18 into it, so you could only dial numbers from  
19 the list in the radio.

20 You would select the number. It  
21 would make the call and you would talk like a  
22 normal telephone.

23 Q. And where would these calls go through?

24 A. Oh, okay. They would go from the car to the  
25 tower site and then get transferred to a phone

1 line and go out from there.

2 Q. Were the calls on the tower site, are those  
3 taped or untaped lines, as far as you know?

4 A. They were untaped.

5 Q. So if somebody were to make a call from Car  
6 24, it would be an untaped call?

7 A. Correct.

8 Q. Was Car 24 also capable of receiving calls?

9 A. Yes, it would be able to, if you knew the  
10 access number to do it.

11 Q. Did Captain Calderon, at the time, tell you  
12 why he wanted you to check Car 24 out?

13 A. No, he did not.

14 Q. Did he say anything else to you that you can  
15 recall at this time when he first came to you?

16 A. Not that I can recall, no.

17 Q. Has Captain Calderon or any other member of  
18 the New Philadelphia Police Department in  
19 2000, or prior to 2000, ever questioned you  
20 about modifications or adaptations to its  
21 radio equipment in 2000 or prior to 2000?

22 MR. PIOTROWSKI: Can we -- I lost a  
23 big chunk of that question.

24 Q. Sure.

25 Did Captain Calderon or any other



1 member of the New Philadelphia Police  
2 Department ever ask you in 2000, or prior to  
3 the year 2000, about modifications or  
4 adaptations to the communication equipment,  
5 the radios?

6 A. No.

7 Q. Do you know how the procedure that one would  
8 have had to have gone through to make that  
9 change to Car 24's radio?

10 A. You would need the software installed on a  
11 computer and just an interface cable to go  
12 from the computer to the radio.

13 Q. Would you describe that as complicated or  
14 uncomplicated?

15 THE ARBITRATOR: As uncomplicated as  
16 possible.

17 MR. TSCHOLL: Pardon?

18 THE ARBITRATOR: Off the record.

19 (Discussion held off record.)

20 A. Motorola produces software, which you use to  
21 set up the radios. You have to have this  
22 software installed onto a computer and there's  
23 just an interface cable that goes from the  
24 computer to the radio. And with the computer,  
25 you can download the information from the

1 radio to the computer, make any modifications  
2 that you need to and dump it back into the  
3 computer or -- I'm sorry. The radio.

4 Q. Now, calls that could be made with this setup,  
5 how would those be recorded or charged for?

6 A. We own the telephone line. Staley's owns the  
7 telephone line. We, you know, would pay the  
8 monthly bill for the phone and any long  
9 distance charges that would incur on it.

10 Q. So if a call was made on Car 24's car phone or  
11 cell phone, what would you call it?

12 A. Phone interconnect.

13 Q. Phone interconnect. Okay.

14 That would be billed to Staley's?

15 A. Correct.

16 Q. It would not be billed to the City of New  
17 Philadelphia Police Department?

18 A. No, it would not.

19 Q. Why not?

20 A. They never asked for the service when we  
21 started it so, you know, we can't really bill  
22 them for something they didn't ask for.

23 Q. Now, do you have customers that ask for it?

24 A. Yes.

25 Q. And who pays for it when the customer asks for

1 it?

2 A. We charge \$10 a month per user. So, yes, they  
3 would have a \$10 a month charge.

4 Q. And what about long distance calls?

5 A. At that time it was not set up to make long  
6 distance phone calls.

7 Q. You say you've been dealing with the City for  
8 ten years?

9 A. Um-hum.

10 Q. Are you aware as to whether or not any of the  
11 other City -- you've talked about the mobiles,  
12 which are found in the cruisers, correct?

13 A. Yes.

14 Q. And you say you know of no other mobile unit  
15 that had these capabilities?

16 A. Not to my knowledge.

17 Q. Now, let's go to the portables. Describe a  
18 typical portable radio that an officer in the  
19 City of New Philadelphia would have.

20 A. What do you mean, as far as describing it?

21 Q. What features would it have?

22 A. It would have a scan feature where they can  
23 listen to New Philly Police and Dover Police.

24 THE ARBITRATOR: And Dover?

25 THE WITNESS: Yes, if they chose

1 to do so. And really just, basically, you  
2 know, talk to the police departments and fire  
3 stations -- fire departments.

4 Q. Would it have a phone interconnect feature?

5 A. Some of them did and some of them didn't. At  
6 the time we set everything up, they would not  
7 have been able to use it, because like I say,  
8 they didn't ask for it. It's just something  
9 that was set up that they never used.

10 Q. So the capacity was there, but it hadn't been  
11 activated?

12 A. Yes.

13 Q. And how would a client or a customer go about  
14 activating the system when it was originally  
15 installed?

16 A. They would have to come to us and, you know,  
17 say, "We want this turned on." And we would  
18 get them set up so they could use it that way.

19 Q. Has the City ever asked you or Staley's to  
20 activate the phone interconnect system on its  
21 portable radios?

22 A. Not to my knowledge, no.

23 Q. So if a -- strike that.

24 Now, subsequent to the year 2000, has  
25 Captain Calderon asked you to look at any of

1 the radios to determine whether or not they've  
2 been modified or adapted?

3 A. Yes, he has brought two radios down.

4 Q. When did that occur?

5 A. The end of spring, beginning summer of 2000.  
6 Sometime in there.

7 Q. What about in 2001 -- oh, so in 2000, he also  
8 brought you two radios?

9 A. I believe so. I believe it was that summer.

10 Q. And did he tell you whose radios they were?

11 A. I don't recall if he did or not.

12 Q. So you don't know whose radios he asked you to  
13 take a look at?

14 A. No.

15 Q. What did he ask you to do with these radios?

16 A. I can put them -- hook the cabling up, hook  
17 them to the computer and download the  
18 information and just look and see what they  
19 say.

20 The one radio I was not able to do  
21 that with. It had had some kind of error on  
22 display, so it was unusable and the other  
23 radio had several scan lists programmed in it,  
24 phone lists, also.

25 Q. Did these radios have the phone interconnect

1 features to them?

2 A. The one that was operational, yes.

3 Q. What about the one that wasn't operational?

4 A. I don't know, because it was brain-dead to  
5 use.

6 Q. How would a radio become brain-dead?

7 A. In our experience, if you try to hook these  
8 radios up to the laptop computer and read them  
9 with a low battery, it can sometimes cause a  
10 fail, which means they'll lock up and give you  
11 this fail code.

12 That's the only time I've ever seen  
13 that happen.

14 Q. So explain that to me. So if somebody tried  
15 to modify or adapt --

16 MR. PIOTROWSKI: I'm going to  
17 object. How much leading of the Witness are  
18 we going to do? This is Direct Examination  
19 and it certainly seems that you're about to  
20 put testimony in his mouth.

21 THE ARBITRATOR: Well, there's no  
22 question on the floor. I suppose to avoid the  
23 objection, you might ask him to repeat his  
24 response and explain it in more detail.

25 MR. TSCHOLL: That's fine.

1 BY MR. TSCHOLL:

2 Q. Could you explain how that would happen?

3 A. How the radio would become unusable?

4 Q. Yes.

5 A. What it is, the microprocessor in the radio  
6 would be like the brains of the radio, you  
7 know, if something happens to it and it dies  
8 or quits working, so on the display it will  
9 say "fail."

10 We've programmed radios before and  
11 have had that happen to us. That's not the  
12 only way it could happen, but that is a way  
13 that it could happen.

14 Q. Has anybody from The City of New Philadelphia  
15 ever brought a radio to you that wasn't  
16 working because it had a low battery?

17 A. Well, yes, but, I mean, the portable itself  
18 will indicate if it has a low battery.

19 Q. Now, what happens -- again, maybe if you can  
20 explain again in a little more detail, what  
21 happens if it has a low battery and you say  
22 you try to hook it up and download; is that  
23 what you said?

24 A. Yes.

25 Q. And what do you mean? If you hook it up and

1 download, what are you trying to do?

2 A. Read the information that's stored into that  
3 radio into your computer and taking the  
4 information from the radio, and transferring  
5 it to the computer.

6 Q. Taking something out of the radio?

7 A. Just the information, yes. You're just taking  
8 that information and you're transferring it to  
9 your computer.

10 It takes maybe a minute or two for  
11 this to happen. If when all of this is  
12 happening, the battery of the radio goes dead,  
13 and turns the radio off, it can corrupt the  
14 brains of the radio. Then you will get that  
15 fail code on it.

16 Q. Is there a cost associated with putting the  
17 radio back in its original condition?

18 A. Yes, we have to ship it to Motorola. They  
19 charge us \$200 to do it -- well, we charge  
20 \$200 for that service.

21 Q. And, again, do you ever recall having to do  
22 that service for the City of New Philadelphia?

23 A. No. We've done it with radios. I don't know  
24 who for. I mean, that's happened to us, at  
25 least, on two occasions.



1 Q. Kenny, have you recently received printouts  
2 regarding a number of radios at Captain  
3 Calderon's direction?

4 A. Yes.

5 Q. And you've got the witness packet there. I'd  
6 ask you to turn to the Exhibits marked 55 to  
7 92. Can you tell me when did Captain Calderon  
8 request that you do an analysis?

9 A. It was this past Tuesday.

10 Q. Okay. And what did Captain Calderon request  
11 that you do?

12 A. Just print out the information that was stored  
13 in the radios.

14 Q. Which radios?

15 A. Car 024, Car 925, Rocky Dusenberry's portable  
16 and Shawn Nelson's portable.

17 Q. Okay. Now, Car 925 has a mobile radio; is  
18 that correct?

19 A. Yes.

20 Q. And do other police cruisers have similar type  
21 mobile radios?

22 A. The exact same model, yes.

23 Q. Okay. So the printout of 925 would represent  
24 a printout for all of the mobile radios and  
25 police cruisers?

1 A. Yes, that's the standard of all the radios.

2 Q. Okay. And explain what is on 55, please.

3 A. That would be just a list of the channels  
4 that's in the radio itself.

5 Q. And those are referred to in this Exhibit as  
6 modes?

7 A. Yes.

8 Q. And to the right of modes is some  
9 abbreviation, which some of this we can figure  
10 out for ourselves, but it is --

11 A. Yes. Just as far as the modes themselves, you  
12 mean?

13 Q. Yeah.

14 A. That's just the names of the channels.

15 Q. The names of the channels.

16 So Mode 4 would be the New  
17 Philadelphia Police Department; would that be  
18 correct?

19 A. Correct.

20 Q. Now, turn to 56, what is 56?

21 A. It just lists the frequencies of those  
22 channels.

23 Q. Okay. For which vehicle?

24 A. Same -- well, it says "024."

25 Q. Is this the analysis then of 024?

1 A. No, that -- it is, yes.

2 Q. How does this differ from the analysis of 925?

3 A. Well, it doesn't. You would have to go to  
4 page 61 --

5 Q. Okay.

6 A. -- and you compare it with page 68.

7 Q. Compare it with 68?

8 A. Yes.

9 Q. Yeah?

10 A. That will show the difference between Car 024  
11 and Car 925.

12 Q. And can you highlight those differences for  
13 us, please?

14 MR. PIOTROWSKI: 68 and 61?

15 MR. TSCHOLL: Yes.

16 A. Well, I thought it was 68 and 61. I'm not so  
17 sure now. Well, one example will be page 65  
18 and page 68.

19 Q. What is it an example of?

20 A. Page 68 shows a phone list, which is boxed.

21 Q. "Boxed," you mean there's some --

22 A. Yeah, it's circled.

23 Q. Whose handwriting is that?

24 A. That would be mine.

25 Q. Okay.

1 A. That just shows a list of a blank phone list.  
2 It says phone one, phone two, phone three,  
3 phone four. That's the way we set them up  
4 originally.

5 If you go to page 65 on the phone  
6 list, there's a phone list programmed into it  
7 with some numbers.

8 Q. So the blank phone lists would mean that you  
9 can't call out of --

10 A. Correct, there's no phone numbers in there.  
11 If you try to use it, it wouldn't work.

12 Q. And the phone list on 65 then, that's  
13 different than --

14 A. Correct, that's in Car 024 and that's what  
15 phone list was programmed into it.

16 Q. So somebody had programmed these numbers into  
17 Car 024's phone?

18 A. Yes, they were different, yes.

19 Q. Incidentally, what is number six on page 65?

20 A. Union ER.

21 Q. Do you know what that is?

22 A. The hospital emergency room.

23 Q. And, again, if calls were made from Car 24,  
24 the City would not be billed for those calls?

25 A. No.

1 Q. Are there any other differences between Car  
2 024 and 925?

3 A. Well, there is, but I can't seem to find it.  
4 The scan lists were different between the two  
5 cars.

6 Q. That's okay. You may find it later. Let's  
7 move on here so we can keep this thing  
8 moving.

9 A. I found it; 61 and 72.

10 Q. Sixty-one is the scan list for which?

11 A. 024; 72 is for Car 925.

12 Q. And how do they differ?

13 A. On page 61, on the right side of the screen  
14 where it says, "scan," and underneath it, it  
15 will say, "nonpriority list" and "priority  
16 list." It says, "operator select," which means  
17 the driver of the car could select any  
18 channels he wanted to scan.

19 Q. And how does that differ from 925?

20 A. It has a fixed list, which means you cannot  
21 select a scan list in it at all.

22 I would tell -- I could program the  
23 car to scan two channels, say, and that's all  
24 it would ever scan with a fixed list.

25 Q. And what type of a scan list, to your

1 knowledge, does Staley's put into the Police  
2 Department's radios?

3 A. They were set up with a fixed list.

4 Q. And do you recall -- I mean, how long has the  
5 City been set up with a fixed list?

6 A. They've had these radios approximately seven  
7 years. And to my knowledge, it's been that  
8 way since.

9 Q. It's always been a fixed list?

10 A. Yes.

11 Q. Do you know why they're set up with a fixed  
12 list?

13 A. If you scan too many channels on this radio  
14 system, you tend to miss calls on your own  
15 channel.

16 Q. And why is that?

17 A. There's no priority scan on the trucking radio  
18 system and your radio would -- if you're  
19 scanning, it would just receive whatever the  
20 first bit of traffic was and it would stay  
21 locked on there until there was no more  
22 traffic and then it would go back to scanning  
23 again.

24 Q. So it's probable or possible that with these  
25 adjustments that were made on 24, that a car

1           could miss calls?

2       A.     Yes, it's very easy.

3                       When we started this system, we  
4       recommended to all of the Chiefs of Police and  
5       the fire departments, if they were going to  
6       have a scan list, to make it as short as  
7       possible for that exact reason, so they  
8       wouldn't miss calls.

9       Q.     And other than the City of New Philadelphia,  
10      what police departments or fire departments  
11      does Staley's service?

12     A.     Nearly the whole county.

13     Q.     And have they taken your advice on the limited  
14      scan lists?

15     A.     Yes.

16     Q.     Does any police or fire department in the  
17      county have a scan list that you found on 61  
18      for Car 024?

19     A.     Does any?

20     Q.     Does any police or fire department in the  
21      county have this multiple scan list that you  
22      found when you did this analysis on 024?

23     A.     The Sheriff's office, yes, they do scan  
24      several channels. For the reason being, they  
25      use this type of radio as their secondary

1 means of communication. They use a different  
2 radio as their main radio.

3 Q. What would be their primary?

4 A. A different radio system all together.

5 Q. Okay.

6 A. They use something like this as just a backup  
7 so they can talk with the other departments in  
8 the county.

9 Q. Okay. You say Captain Calderon also asked you  
10 to look at Rocky's portable; is that correct?

11 A. Yes.

12 Q. And you've got a number of documents that  
13 appear to be Rocky's portable, of your  
14 analysis, can you identify those documents?

15 A. Yes, page 73 through 79 show four different  
16 scan lists that were programmed into Rocky's  
17 portable. Meaning, he could scan everything  
18 in that radio.

19 Q. Is there any difference between the advice you  
20 would give between a mobile and a portable  
21 regarding the channels that you should scan?

22 A. On this system you should scan the least  
23 amount of channels as you possibly can, just  
24 for the fact you're missing calls.

25 Q. So for the same reasons you just gave us?



1 A. Exactly, yes. And we did find a couple  
2 channels in Rocky's portable, the New Philly  
3 Fire channel; he would not have been able to  
4 talk to New Philly Fire.

5 Q. Where do you see that?

6 A. Page 85.

7 Q. Eighty-five?

8 A. Yes.

9 Q. Okay. And can you point out to us where  
10 you --

11 A. On the right-hand column where it says, "talk  
12 group number," it should not be E-09. It  
13 should be E-01. With that being different, he  
14 could talk all day and New Philly Fire would  
15 never hear him.

16 Q. Okay. Anything else?

17 A. Well, on page 84, like the Dover Police  
18 Private, Dover PD PVT, TUSCOM 2, channels like  
19 that, were set aside for those specific  
20 departments just to use for themselves.

21 Q. Now there's --

22 THE ARBITRATOR: Which ones are  
23 those, again? I'm sorry. The ones  
24 underlined?

25 THE WITNESS: Yes.

1 Q. The handwriting that's on this printout, do  
2 you know whose handwriting that is?

3 A. That's my own.

4 Q. And why did you make these notations, the  
5 handwriting on these printouts?

6 A. If you compare it with Shawn Nelson's portable  
7 on page 88, you'll see the difference between  
8 the two. Shawn Nelson's portable was set up,  
9 to my knowledge, as the way we did them  
10 originally seven years ago.

11 Q. And was the printout on 88, would that hold  
12 true for the other portables in the City, as  
13 far as you know?

14 A. Yes, to my knowledge, they should all be like  
15 88 and 89.

16 Q. What are the basic differences between Rocky's  
17 and Nelson's then?

18 A. Well, the scan lists. The portable on 88  
19 should only be scanning New Philly and Dover  
20 Police. Whereas, Rocky's portable, there's  
21 four pages -- four different scan lists, I  
22 should say, that it was using.

23 Q. Would you have the same problem with missing  
24 calls?

25 A. Yes, you would. It would be the same as a

1 mobile, yes.

2 Q. Anything else? Was there a phone interconnect  
3 feature on Rocky's?

4 A. Yes, there was.

5 Q. Where do you see that?

6 A. Page 81.

7 Q. And were there numbers programmed into this  
8 phone interconnect feature?

9 A. Yes, that's a list of what was in it.

10 Q. Was there a phone interconnect feature on  
11 Shawn's?

12 A. Yes, there was also one on his. It's on page  
13 92.

14 Q. Do you know who programmed these numbers into  
15 this phone interconnect?

16 A. Do I know who did it?

17 Q. Yeah.

18 A. On 92?

19 Q. Yeah.

20 A. Myself or Tim Staley.

21 Q. Okay.

22 A. That's the way these radios were set up  
23 originally, some of them.

24 Q. Was this phone interconnect feature activated?

25 A. Not originally, no.

1 Q. No. Did anybody ever tell you to activate the  
2 phone interconnect feature for the City?

3 A. No.

4 Q. Any other differences between Rocky's and  
5 Nelson's that you can point out to us in this  
6 analysis?

7 A. I do not believe so.

8 Q. So pretty much it's the same thing as the  
9 mobiles?

10 A. Yes.

11 Q. Are any special permits or licenses needed to  
12 use this software to do what was done to 024  
13 or Rocky's?

14 A. Motorola owns the rights to the software. We  
15 have a subscription where they pay a certain  
16 amount and they send us the software. As far  
17 as licensing, I don't really know.

18 Q. Okay. That's all I have.

19 THE ARBITRATOR: Before you cross,  
20 let me -- looking at 81 and 92, again. Under  
21 81, when you see the phone number, you see 17,  
22 18, 19? Does that mean that that phone can  
23 program 19 numbers?

24 THE WITNESS: Yes.

25 THE ARBITRATOR: And then when you

1 see on the phone text phone 17, 18, 19 and  
2 there's nothing there, that means that those  
3 have not been programmed?

4 THE WITNESS: Right, they're  
5 empty, yes.

6 THE ARBITRATOR: And, likewise, on  
7 92, same answer?

8 THE WITNESS: Correct.

9 THE ARBITRATOR: And looking at 65  
10 and 68, the same answer relates to that,  
11 that's the mobile phones, so that would be the  
12 same answer, right?

13 THE WITNESS: Yes.

14 THE ARBITRATOR: And these two are  
15 the mobile phones for 024 and 925?

16 THE WITNESS: Yes.

17 THE ARBITRATOR: Now, you made some  
18 comment about the Dover Police Department had  
19 two special lines that were only to be used by  
20 them. Do you recall that testimony?

21 THE WITNESS: Yes.

22 MR. TSCHOLL: Eighty-four, I  
23 think.

24 THE ARBITRATOR: Yeah.

25 And is that Number 4, Dover PD

1 private, do you see on C-84?

2 THE WITNESS: Yes.

3 THE ARBITRATOR: And you've got  
4 TUSCOM, Number 6 on page C-84?

5 THE WITNESS: Yes.

6 THE ARBITRATOR: And that's your  
7 handwriting, "shouldn't have"?

8 THE WITNESS: Yes.

9 THE ARBITRATOR: What do you mean  
10 by, "shouldn't have"?

11 THE WITNESS: Well, the whole  
12 system -- I mean, if you have a scanner, you  
13 can listen to this system and hear everybody,  
14 but when we originally set it up, you see New  
15 Philly has "New Philly PD," and "New Philly  
16 private." We did the same for Dover Police  
17 and "TUSCOM 2," is really "TUSCOM Sheriff  
18 Private," also.

19 Those were set up so those individual  
20 departments could have a channel that they  
21 could go to, where other departments wouldn't  
22 be able to hear them.

23 THE ARBITRATOR: How does one access  
24 these private numbers?

25 THE WITNESS: I'm not sure what

1           you're asking.

2           THE ARBITRATOR:   You say you set them  
3           up so that it would be private; no one else  
4           could use it, is that from a scanning  
5           standpoint?

6           THE WITNESS:       No, if you have a  
7           scanner, you're going to hear it regardless.

8           THE ARBITRATOR:   You're going to get  
9           it anyway?

10          THE WITNESS:       Right. It's just if  
11          Dover was on Dover Private, New Philly  
12          shouldn't be able to talk to them on that  
13          channel or listen to them with their radio.

14          THE ARBITRATOR:   But they could still  
15          get the information on the scanner?

16          THE WITNESS:       Correct.

17          THE ARBITRATOR:   So it's not like  
18          breaking some kind of security code or  
19          something like that?

20          THE WITNESS:       No.

21          THE ARBITRATOR:   Okay. Thank you. I  
22          appreciate that.

23                 In light of that, do you have any  
24          further questions?

25          MR. TSCHOLL:       Yeah, I do.

1 BY MR. TSCHOLL:

2 Q. If Mr. Cimperman would have come to you and  
3 asked you to make the modifications that your  
4 analysis indicates was made for Rocky's  
5 portable for 024, would you have done it?

6 A. No, we usually need the Chief to okay such  
7 things as that.

8 Q. And why is that?

9 A. Because you could have anybody in there  
10 requesting different channels and their radio  
11 is set up a different way from somebody else's  
12 and it would be chaos.

13 Q. Was the phone system activated on Rocky's  
14 portable? Looking at 81.

15 A. Well, it doesn't really tell me that it was  
16 activated, no.

17 We had a glitch in our system a  
18 couple years ago and anybody who had a radio  
19 that had access to the interconnect, could use  
20 it free of charge.

21 We had lightning hit the tower and  
22 caused us problems, so we weren't able to  
23 control who could use it or who couldn't. So  
24 anybody who had access to it, could use it.

25 Q. But just so I understand, if you wanted that



1 feature, you would have to pay for it; is that  
2 correct?

3 A. Originally, yes, but like I say, once we had  
4 the problem with it, we had no way to police  
5 it. So like I say, now the whole system, or  
6 that part of the system, has been shut off all  
7 together.

8 Q. When did you shut it off?

9 A. Probably a month, two months ago.

10 Q. Why did you shut it off?

11 A. Because our company was going to be billed as  
12 if we were a phone company, because we had  
13 this feature and the FCC changed the rules for  
14 it.

15 Q. Thanks, Kenny. I'm sorry. I forgot.

16 Turn around and look at the two  
17 radios. Do you see those radios?

18 A. Yes.

19 Q. And can you identify those radios?

20 MR. PIOTROWSKI: Can we put them over  
21 here?

22 Q. Are those the radios that you looked at?

23 A. Again, to my knowledge, these are the two,  
24 yes.

25 Q. When you say, "the two"?

1 A. Well, the two that Rich brought to my shop  
2 that I made the printout of.

3 Q. Which one was brain-dead?

4 A. I would have to say this one, but without  
5 putting the battery on it, I can't tell you.  
6 This one. (Indicating.)

7 Q. That's the brain-dead one?

8 A. Yes.

9 Q. Okay. And you don't know whose City-issued  
10 radio that was, do you?

11 A. Well, it's got a note on it.

12 Q. Okay. Rich didn't tell you whose radios he  
13 was having --

14 A. Oh, no, at the time, no, he did not.

15 Q. Okay. That's all.

16 THE ARBITRATOR: Your tower was  
17 struck by lighting?

18 THE WITNESS: Yes.

19 THE ARBITRATOR: And as a result of  
20 that, fortuitous of that, the people, users of  
21 your system, could make long distance calls,  
22 is that what you're telling us?

23 THE WITNESS: Yes, something was  
24 damaged in the system, yes, and we could not  
25 regulate it.

1                   Before, if someone wanted to use the  
2                   system, we would have to hook our computer up  
3                   to the machine and give it an access code of  
4                   that radio. And like I say, after this  
5                   lightning strike, it never worked that way  
6                   again. It was just open.

7                   THE ARBITRATOR: So if long distance  
8                   calls were made through the New Philly Police  
9                   Department radios, through that tower, the  
10                  Police Department wasn't charged for those  
11                  calls?

12                  THE WITNESS:       No.

13                  THE ARBITRATOR: Okay. You said that  
14                  the changing in this programming was always  
15                  done -- you always had the Chief do it to  
16                  prevent chaos, so you could have the person  
17                  responsible for it, rather than having  
18                  everyone come in. So it's to prevent chaos  
19                  within your organization?

20                  THE WITNESS:       Well, yes, and have  
21                  an officer come in and request something and  
22                  then have his Captain or the Chief come down  
23                  and say, "Why did you do that without my  
24                  permission?"

25                  THE ARBITRATOR: Now, you just put a

1 battery on the one phone that's brain-dead and  
2 putting a battery on it didn't permit the  
3 phone to work; is that correct?

4 THE WITNESS: It just showed that  
5 if I put the battery on this unit and turned  
6 it on, it will say, "Fail" something "02." It  
7 just shows there's a fail code on it.

8 THE ARBITRATOR: Thank you.  
9 Anything further?

10 MR. TSCHOLL: No.

11 THE ARBITRATOR: Cross?

12 CROSS-EXAMINATION

13 BY MR. PIOTROWSKI:

14 Q. How do these devices store their settings?

15 A. They have an E-prom inside them, which  
16 maintains the memory.

17 Q. Similar to a computer --

18 A. Sort of, yes.

19 Q. -- that maintains its timekeeping capabilities  
20 even when it's unplugged?

21 A. Yes.

22 Q. And do they also have a quarter-size battery  
23 or something in there to backup the big  
24 backpack battery that goes on there?

25 A. No, they do not.

1 Q. Okay. So it doesn't require any kind of power  
2 to maintain the settings?

3 A. No.

4 Q. None whatsoever?

5 A. No.

6 Q. What else can delete those settings? Because  
7 that's what happened to the brain-dead one,  
8 right?

9 A. Yes.

10 Q. The settings have come out?

11 A. Um-hum.

12 Q. What can happen to do that?

13 A. Well, actually, the E-prom has been  
14 corrupted. I should rephrase that.

15 Q. Okay.

16 A. So the E-prom has been corrupted somehow and  
17 various things could cause it.

18 Q. I mean, are the cases hardened against  
19 electromagnetic shocks or physical abuse?

20 A. To an extent.

21 Q. Obviously, yeah, you can't put them in a  
22 boiling pot of water?

23 A. No.

24 Q. Physical abuse of the radio itself could cause  
25 a problem?

1 A. It could.

2 Q. Okay. Can corrosion cause a problem?

3 A. It could, yes.

4 Q. Okay. Is there anything else that comes to  
5 mind? How do you break your Motorola  
6 portable?

7 A. Dropping it. Throwing it. I mean --

8 Q. What if it goes under water?

9 A. That would do it. Most definitely.

10 Q. Is there anything else that comes to mind?

11 A. Not other than what I mentioned about the  
12 whole programming thing.

13 Q. Right.

14 A. That's it, yeah.

15 Q. Can the device suffer from electrical contact  
16 and deprogram or --

17 A. I've never seen one deprogram. I mean, this  
18 is an actual -- the E-prom has been corrupted  
19 somehow. Who knows how.

20 Q. Sitting for five years?

21 A. I can't say that it wouldn't happen, but I've  
22 never seen it happen.

23 Q. Usually these radios are used daily or, at  
24 least, five days a week, right?

25 A. Correct.

1 Q. So you expect them to go in and out of  
2 charges?

3 A. Right.

4 Q. Okay. I'm a little confused on these sheets  
5 starting at 55 or whatever it starts at. Now,  
6 on the first sheet here --

7 A. Okay.

8 Q. -- this is a printout out of your Motorola  
9 radio service software, right?

10 A. Right.

11 Q. So you plugged in Car 925 to your cable and  
12 said to your software, "Give me the settings  
13 in Car 925's mobile radio"?

14 A. Yes.

15 Q. And it gives you all of this information?

16 A. Yes.

17 Q. When did you do this?

18 A. This would have been done Monday afternoon.

19 Q. What is the 26th January 01 date?

20 A. That's what my computer says on everything.  
21 That's meaningless.

22 Q. Okay.

23 THE ARBITRATOR: So Monday, you mean,  
24 April 30th, correct?

25 THE WITNESS: Yes.

1 Q. Now, if you flip back to any of Rocky's pages;  
2 81, for instance --

3 A. Yes.

4 Q. -- it says, "Thursday, September 4, 1980."

5 A. Okay. The mobile radios were done with my  
6 laptop computer.

7 Q. It has a different date in it or --

8 A. Yeah, it's a different computer. The  
9 portables I did with the bench computer. They  
10 were two different computers. And it had a  
11 hard drive failure at one time so everything  
12 is 1980 on it.

13 Q. Okay. Now, we know Rocky's portable had scan  
14 functions put in it, right?

15 A. Yes.

16 Q. And those are user-selectable scan functions?

17 A. Correct.

18 Q. So he can select any different number of  
19 channels to scan?

20 A. Yes.

21 Q. And he had selected some sizable lists, right?

22 A. Um-hum.

23 Q. But those could be easily deleted through  
24 using the menu on the portable itself, right?

25 A. Yes, you can turn them on and off, yes.



1 Q. Now, if he's on a midnight shift where  
2 nothing's happening, he can set his scanner on  
3 his portable for everybody and their mother?

4 A. Yes.

5 Q. And the minute he gets a call, can he switch  
6 over to another scan channel that's just the  
7 two channels that are normally scanning?

8 A. Yes, you can have multiple scan lists.

9 Q. And he can switch over, in fact, to just the  
10 New Philadelphia Police channel, right?

11 A. Yes.

12 Q. So by adding these scan channels, you have  
13 added a capability to the radio, the portable,  
14 without deleting any capabilities, right?

15 A. Correct.

16 Q. Now, with regard to the ones in the cars;  
17 adding the scan function to those is a similar  
18 addition of a capability without any  
19 subtraction, right?

20 A. Yes.

21 Q. If I call Motorola today - and I believe their  
22 number is 1-800-822-1100 or something like  
23 that - and ask them to sell me the Motorola  
24 service software, will they sell it to me?

25 A. I do not know.

1 Q. Okay. Do you know if they will sell me the  
2 necessary interface cables to hook up my  
3 computer to a Motorola portable?

4 A. I really can't answer that either. I don't  
5 know.

6 Q. Okay. Now, could any Motorola dealer modify  
7 these portables?

8 A. Yes.

9 Q. And are there any Motorola authorized dealers  
10 who deal strictly with civilian populations?

11 A. I'm assuming, yes.

12 Q. Would there be anything illegal or wrong in  
13 programming one of these radios to scan the  
14 Dover Private channel?

15 A. No, there is nothing illegal about it.

16 Q. Okay. And, in fact, isn't it true that I can  
17 go to Radio Shack and by a scanner today that  
18 will pick up that channel, right?

19 A. Yes.

20 Q. All the private channels, they're private only  
21 in the sense that it's not supposed to turn  
22 into a yak line for every other department?

23 A. Yes.

24 Q. You just want to talk within your department.  
25 Okay.

1                   After the lightning strike, did you  
2                   guys get hit with huge long distance bills?

3           A.     No, we did not. Not to my knowledge we  
4                   didn't.

5           Q.     Now, you said that the FCC is calling you a  
6                   phone company under some new interpretation of  
7                   the rules, or, at least, that's your  
8                   understanding?

9           A.     Yes.

10          Q.     That's got nothing to do with New  
11                  Philadelphia's portables or mobiles or  
12                  anything like that?

13          A.     No.

14          Q.     Do you have any phone calls that you know were  
15                  made from any of the portables in question?

16          A.     I don't know. We wouldn't have a record of  
17                  it.

18          Q.     There's no record?

19          A.     No.

20          Q.     So if long distance phone calls were made, you  
21                  would have a record of that, because they  
22                  would have to bill you for them, right?

23          A.     Yes.

24          Q.     And the phone numbers contained in these  
25                  portables and radios, did you recognize any as

1           being beyond those proper for a law  
2           enforcement radio?

3       A.    No, because you could see they're all names.  
4            So you know what they all are, I mean --

5       Q.    Do you know who Gregg is on page 92?

6       A.    Greg Popham.

7       Q.    And the Chief's home, do you recognize that  
8            that's the actual Chief's home phone number?

9       A.    I wouldn't know his home phone number.

10      Q.    Okay. But didn't you say that on Shawn  
11            Nelson's radio, this would be the standard  
12            programming you guys put in?

13      A.    Yes.

14      Q.    Okay. How many other portables have this  
15            programming in it?

16      A.    I don't know that.

17      Q.    Is it possible to add phone numbers via the  
18            use of the keys itself?

19      A.    No, it's not.

20      Q.    And do you know if anybody in your  
21            organization has ever added any numbers other  
22            than the ones listed on the Nelson file?

23      A.    Not to my knowledge.

24      Q.    Okay. But you don't know for sure?

25      A.    Yeah, I don't know.

1 Q. But you do recognize these as being things  
2 that your agency has put in?

3 A. Yes.

4 Q. We had earlier testimony from Rocky Dusenberry  
5 that he was aware that Mike Henry's portable  
6 had the phone function activated?

7 A. Okay.

8 Q. Do you have reason to doubt that?

9 A. It's possible.

10 Q. Now, would Dave Cimperman be the only source  
11 of that activation?

12 A. No. Like Shawn Nelson's portable, for  
13 instance, after we had the lightning hit,  
14 anybody was able to access the system if you  
15 had a radio that had a list of phone numbers  
16 in it, you could use it.

17 Q. And do you know how many of the portables here  
18 in New Philadelphia had the list of phone  
19 numbers?

20 A. Not really, no.

21 Q. Okay. I'm a little confused.

22 A. Okay.

23 Q. The phone lines used as a result of these  
24 phone numbers being stored in the portables,  
25 those phone lines are through the 911

1           consoles?

2       A.    No, there's one phone line.

3       Q.    Okay.

4       A.    I'll just explain the whole thing.  There's  
5           six channels at the tower site that these  
6           radios work off of.  There's one phone line  
7           going to one of those six channels.

8       Q.    Okay.

9       A.    If you're using the phone interconnect  
10          feature, you're using that channel and, you  
11          know, you're talking to -- it goes from this  
12          radio to that channel and then goes onto that  
13          phone line.

14      Q.    And that phone line is occupied?

15      A.    Exactly.

16      Q.    Okay.  So if two people tried to use the phone  
17          interconnect at the same time --

18      A.    You could not do it.

19      Q.    You would get a busy signal?

20      A.    Would you get a busy signal.

21      Q.    Okay.  That then doesn't tie up any 911 lines?

22      A.    Not telephone lines, no.  It would tie up one  
23          of the six channels.

24      Q.    On that tower?

25      A.    On the radio, correct.

1 Q. Now, do you guys do some kind of computer  
2 analysis of how often your towers get accessed  
3 and whether or not you need to add channels?

4 A. No, Motorola did a study when 911 come in, and  
5 they said, "This is how many channels you  
6 need."

7 Q. Do you know whether or not they overestimate  
8 the necessary number or --

9 A. They usually make it high, yes.

10 Q. So have you ever had any problem with those  
11 six channels not being sufficient for your  
12 users in Tuscarawas County?

13 A. There's been certain times. If there was an  
14 emergency or something like that, it's  
15 possible that -- and it's happened that all  
16 channels have been tied up. And what happens,  
17 you key a radio and it beeps at you telling  
18 you that all the channels are tied up and as  
19 one becomes free, you'll hear another tone and  
20 get access. So, yes, it's happened.

21 Q. Now, the pager function. We haven't talked  
22 much about the pager function. I can take one  
23 of these portables, if the pager function is  
24 activated, and make another portable beep,  
25 right?

1 A. Yes.

2 Q. And then on the little gray screen, shows up  
3 my radio number, right?

4 A. Um-hum.

5 Q. And does that in any way constitute a safety  
6 violation? Is there any reason not to  
7 activate that?

8 A. The only thing that could happen there is if  
9 you're paging somebody and so you two are  
10 talking privately, because nobody else in the  
11 department would hear that.

12 Q. Your page?

13 A. Right, it would just -- the guy you're paging  
14 would get that.

15 Q. And that's a single tone?

16 A. Right.

17 Q. Okay.

18 A. And nobody else in the department would hear  
19 that, when you got on there to respond to him,  
20 to the person who paged you.

21 Q. You'd say, "25, what do you want?"

22 A. And those two would be talking to each other.  
23 No one else in the department could hear that  
24 and it would be like you were on your own  
25 channel.



1 Q. Okay. So the two radios could then talk to  
2 each other?

3 A. Correct.

4 Q. Similar to picking up your cell phone and  
5 calling my cell phone?

6 A. Yes.

7 Q. Or, "Pick up a phone and call me at this  
8 number"?

9 A. Yes.

10 Q. Or, "Let's meet in the parking lot"?

11 A. Yes.

12 Q. Any number of ways to have a private  
13 conversation between two police officers?

14 A. Yes.

15 Q. And that's one of the six channels, or  
16 portable-to-portable, that is going to tie up  
17 one of your tower channels?

18 A. Yes, that would tie up one of the channels.

19 Q. Is that any different than having an  
20 over-the-air conversation?

21 A. No, that's what it is, actually.

22 Q. Okay. It's just --

23 A. Private.

24 Q. -- excluded from coming out of the other  
25 speakers?

1 A. Exactly.

2 Q. Now, on a standard setup, the Village Private  
3 line is available to the New Philadelphia  
4 Police Force, right, private channel?

5 A. I really don't remember whether that was one  
6 they could use or not.

7 Q. Okay. Now, have you had the radios the whole  
8 time this has been pending?

9 A. No.

10 Q. Since last May?

11 A. No, Rich brought them in and took them back  
12 with him when he left.

13 Q. Okay. And do you know if Rocky's radio has  
14 been used since then?

15 A. I don't know.

16 Q. Did you ever reprogram it?

17 A. No.

18 Q. How many spare radios does the Department  
19 have; do you know?

20 A. I don't know.

21 Q. And you don't know how many actually have the  
22 phone interconnect activated?

23 A. I wouldn't have any idea.

24 Q. And you have no idea whether Shawn Nelson's  
25 Department portable had the phone interconnect

1           activated?

2       A.    No, I really don't. I don't think it was,  
3           because like I said, the Chief didn't request  
4           that feature originally, so it wouldn't have  
5           worked originally.

6                    Like I said, after we had our  
7           problems, yeah.

8       Q.    Then it could have?

9       A.    Oh, yeah, it would have. There's no question  
10           it would have, yes.

11      Q.    Okay. So his phone --

12                   THE ARBITRATOR: By "the problem,"  
13           you mean the lightning strike?

14                   THE WITNESS:       Yes, after that.

15      Q.    So the only thing stopping a New Philadelphia  
16           Police Officer from using those phone numbers,  
17           was a vetting system that you had when a phone  
18           call came in from one of the portables, it  
19           said, "Is this one of the authorized  
20           portables?" And if the system said "no," it  
21           ignored the request for a phone number. If  
22           the system said "yes," it went ahead and  
23           hooked up the phone line?

24      A.    Yes.

25      Q.    Then the lightning strike hit and your fire

1 wall or your vetting system went out the  
2 window and suddenly everybody with a phone  
3 number who keyed the system, could dial those  
4 numbers?

5 A. Yes.

6 Q. But we don't know how many of the portables  
7 had numbers in their system, right?

8 A. No.

9 Q. Would it have been all of them?

10 A. It's possible, yes, it was all of them, but I  
11 just don't know.

12 Q. Okay. Now, at the time all this started,  
13 didn't you tell Captain Calderon that Staley's  
14 no longer charged for phone calls?

15 A. After --

16 Q. This was in May. This was after the lightning  
17 strike?

18 A. Yes.

19 Q. Did you check out any of the other radios and  
20 mobiles? I know we've got Car 024, Car 925,  
21 Rocky's portable, and Shawn's portable. Did  
22 you check anybody else's portable radios?

23 A. It's possible that I did. I really don't  
24 remember.

25 Q. But not in preparation for this?

1 A. No. No.

2 Q. So what are the chances that if we pull up  
3 these programming sheets on the Chief's  
4 portable, it's going to be different than  
5 Shawn's portable?

6 A. Well, I can guarantee his would be different.  
7 It's a different model radio. So say one of  
8 the Captain's --

9 Q. Right.

10 A. For instance, I could say that it's probably  
11 like Shawn's. I can guarantee you that it's  
12 not like Rocky's.

13 Q. Okay. But it may be -- I mean, obviously,  
14 over time you've replaced your software. You  
15 say it's a subscription?

16 A. Yes.

17 Q. And you've modified the system to reflect  
18 changing circumstances in the Department?

19 A. Not really.

20 Q. Okay. Tell me about the North Police channels  
21 and the problems about the North Police  
22 channel.

23 A. Well, they change frequencies, yes.

24 Q. Okay.

25 A. From the time 911 began, yes, they had a new

1 frequency. So, yes, we have programed some of  
2 the radios and I still today don't know if we  
3 went through all of them to change. We had to  
4 change just that frequency, yes.

5 Q. So there are small changes that had to be made  
6 every now and then?

7 A. Yes.

8 Q. And you're saying some of the radios still  
9 won't work on North Police?

10 A. Yes, if I haven't done them to reprogram them,  
11 no, they couldn't use North Police.

12 Q. And Rocky's radio to this day won't broadcast  
13 on the fire band, right?

14 A. Yes, that's correct.

15 Q. And do you have any way of knowing how long  
16 that radio had been in that condition?

17 A. No, there's no way of telling.

18 Q. Now, who owns the portables?

19 A. The City of New Philly.

20 Q. If they chose to hire you and pay for you to  
21 go out and get the interface cables and pay  
22 for the software, could you start modifying  
23 these as an employee of the City instead of an  
24 employee of Staley's?

25 A. I don't know. I mean -- you mean the legal

1 aspects of it?

2 Q. I mean, are there departments that have their  
3 own Motorola technician?

4 A. I'm sure there are.

5 Q. Not in this county necessarily?

6 A. Yeah.

7 Q. Okay. Do you know if Akron, do they have an  
8 outside vendor for their radios or do they  
9 keep it in house?

10 A. I would assume it's outside, but I don't know  
11 for sure.

12 Q. Now, assuming that when the radios came in,  
13 the Chief had come to you and said, "We want  
14 as many numbers on the scan list as Dover,  
15 plus one. We want better radios than Dover."  
16 And you said, "Okay," would it have cost any  
17 more money to do that?

18 A. No.

19 Q. The original programming, it's all the same?

20 A. Yeah, there was no charge for the original  
21 programming because the radios were new and we  
22 sold the radios, so --

23 Q. So, in fact, everything that has been done to  
24 these radios is an inherent function that you  
25 just actually deactivated. You've blocked the

1            radios from doing some of the things they can  
2            do for these reasons?

3            A.    Well, we didn't actually block them.    That's  
4            the way they come.    You have to actually  
5            activate them to make them do that.

6            Q.    They come blank?

7            A.    Exactly.

8            Q.    Okay.    But it's clear that it wouldn't have  
9            cost any more money to add all these scan  
10           functions?

11           A.    No.

12           Q.    And is there a monthly fee?

13           A.    I believe.    And I don't think it's to the  
14           police station.    I thought it was to the  
15           county.

16                        CHIEF STAGGERS:    We have a monthly  
17           maintenance fee.

18           Q.    And that takes care of, if the radio  
19           deprograms itself, or it has some other  
20           problems?

21           A.    Problems, repairs, yeah.

22           Q.    But the monthly fee wouldn't require you to  
23           provide new radios if they decided to increase  
24           the size of their force?

25           A.    No.



1 Q. That's tower maintenance and system  
2 maintenance or --

3 A. System maintenance on their radios.

4 Q. Does that increase if you have scan channels?

5 A. No.

6 Q. Well, you mentioned earlier that there was a  
7 \$10 fee per month for the radio interconnect?

8 A. For the telephone at the time we first put it  
9 in, yes.

10 Q. But not at the time Captain Calderon was  
11 investigating?

12 A. Correct.

13 Q. And not now?

14 A. Well, it's like I say, it's not hooked up  
15 anymore, so --

16 Q. Now, this is an unfair question, but I'm going  
17 to ask it anyhow.

18 MR. TSCHOLL: Objection.

19 THE ARBITRATOR: Sustained.

20 Q. What day did Captain Calderon come to see you  
21 to begin discussing this?

22 A. I would have no idea.

23 Q. Okay. May 2000?

24 A. I believe it was starting to get warm  
25 outside. That's what made me say spring. It

1           could have been April. It could have been  
2           May.

3       Q.     But was it June? July?

4       A.     I wouldn't think it was as late as July, but I  
5           don't know that either, so --

6       Q.     Okay. Do we have any way of finding out? Was  
7           there any written communication between you  
8           and Captain Calderon at that time?

9       A.     No, there wasn't. He just came in and  
10          said, "Take a look at this." "Okay. That's  
11          all I needed," and left, so --

12      Q.     Okay. I have no further questions.

13                   THE ARBITRATOR: One question:  
14           There's roughly a \$410 monthly charge per  
15           radio?

16                   THE WITNESS: Per department.

17                   THE ARBITRATOR: Per department.

18           And you said that that charge is sort of a  
19           maintenance charge and it does not increase  
20           for a phone interconnect as far as any  
21           additional charges or --

22                   THE WITNESS: That was for the  
23           phone interconnect. If any department  
24           requested that they be able to use that, we  
25           charge them \$10 on top of whatever we would

1 charge them for a monthly fee for maintenance.

2 THE ARBITRATOR: And is that being  
3 paid here?

4 THE WITNESS: No, they never  
5 requested it, so --

6 THE ARBITRATOR: And the programming  
7 of these phones, is that a phone  
8 interconnect?

9 THE WITNESS: Yes.

10 THE ARBITRATOR: But that programming  
11 does not increase the expense to the City?

12 THE WITNESS: No.

13 THE ARBITRATOR: I mean, I'm  
14 correct?

15 THE WITNESS: Yes, you're correct.

16 THE ARBITRATOR: Okay. Thank you.  
17 Do you have any further questions as a result?  
18 BY MR. PIOTROWSKI:

19 Q. Do any of the portables in the City or the  
20 mobiles in the City, have the phone function  
21 at this point?

22 A. Yes, some of them do. And, no, it does not  
23 work, but, yes, like I say, this one is still  
24 capable of doing it.

25 Q. Of trying to do it anyway?

1 A. Trying, yes.

2 Q. Because the infrastructure has now been  
3 removed?

4 A. Yes.

5 Q. At any point in time, did the City authorize  
6 anybody to have this phone interconnect?

7 A. Not to my knowledge.

8 Q. But for some reason, Staley's installed  
9 numbers in a number of phones?

10 A. Yes.

11 Q. Or a number of radios?

12 A. Yes.

13 Q. Okay.

14 MR. PIOTROWSKI: No further  
15 questions.

16 THE ARBITRATOR: I think you confused  
17 me a little on that.

18 MR. PIOTROWSKI: Okay. See, I was a  
19 little concerned.

20 THE ARBITRATOR: I mean, the City has  
21 not requested the phone interconnect?

22 MR. PIOTROWSKI: Never requested the  
23 phone interconnect feature.

24 BY MR. PIOTROWSKI:

25 Q. However, and correct me if I'm wrong,

1           Staley's, as part of their basic programming,  
2           put phone numbers in the portables?

3       A.    Yes.

4       Q.    But never went to the tower and said, "You  
5           should take phone calls from these portables"?

6       A.    Exactly.

7       Q.    And then when the power got fried, suddenly  
8           these portables that had these numbers - just  
9           in case they ever wanted it - could dial all  
10          these numbers?

11      A.    Yes.

12      Q.    And there's some number, that we're not sure  
13          of, portables still out there, with this  
14          programming in them, even though it's going to  
15          be of no use, because the tower will no longer  
16          accept phone calls?

17      A.    Right.

18      Q.    Okay. And there was never a fee charged to  
19          the City as a result of any of these phones  
20          being capable of dialing phone numbers?

21      A.    No.

22      Q.    Okay. So the \$10 would have been charged had  
23          they ever said, "Hey, we want them to work  
24          like phones"?

25      A.    Yes.

1 Q. But that never occurred?

2 A. No.

3 Q. Let me ask one question: Rocky's portable, it  
4 had more than one New Philadelphia Fire  
5 channel programmed into it, right? Frequency?  
6 I think 73 shows a scan list.

7 A. Well, scan lists are different from actual  
8 channels, so --

9 THE ARBITRATOR: Page, please?

10 MR. PIOTROWSKI: I don't know.

11 THE WITNESS: If you go to page 84  
12 and 85, that's a list of the actual channels  
13 that are in his radio. And there is only one  
14 New Philly Fire. There's New Philly FP2,  
15 which would be their private channel.

16 BY MR. PIOTROWSKI:

17 Q. Okay. I guess I'm confused. Are there two  
18 New Philly Fire channels and an FD2 or is it  
19 just --

20 A. No, there's one New Philly Fire and one New  
21 Philly Fire Private or FD2.

22 Q. Okay. And is the talk group numbered "EOF"  
23 over there; is that correct?

24 A. I believe it is, yes.

25 Q. Is there any way to know whether or not any of

1           these devices ever activated the phone  
2           interconnect?

3       A.    No.

4       Q.    Okay.

5       A.    There would have been one time, but there's  
6           not now.

7       Q.    Okay.

8                   MR. PIOTROWSKI:   No further  
9           questions.

10                   MR. TSCHOLL:       Hopefully this is  
11           the last one.

12                               REDIRECT EXAMINATION

13       BY MR. TSCHOLL:

14       Q.    Did you ever tell the Chief that this  
15           lightning strike had caused these interconnect  
16           phone features of either the mobile or the  
17           portable phones to be activated?

18       A.    No.

19       Q.    Do you know if anybody from Staley's ever told  
20           the Chief that?

21       A.    I would highly doubt it.

22       Q.    So as far as the Chief knew, none of the  
23           mobiles or portables had telephone  
24           interconnect features that could work?

25       A.    Yeah, unless he tried, he wouldn't have known.

1 MR. TSCHOLL: That's all I have.

2 MR. PIOTROWSKI: I have no further  
3 questions.

4 THE ARBITRATOR: Thank you.

5 Off the record.

6 (A brief recess was had.)

7 WHEREUPON,

8 CAPTAIN RICHARD CALDERON

9 who, being first duly sworn, testified as  
10 follows:

11 THE ARBITRATOR: Your name, sir?

12 THE WITNESS: Rich Calderon or  
13 Richard Calderon.

14 THE ARBITRATOR: You may inquire.

15 MR. TSCHOLL: Thank you.

16 DIRECT EXAMINATION

17 BY MR. TSCHOLL:

18 Q. Captain, are you employed?

19 A. Yes, I am employed by the City of New  
20 Philadelphia Police Department.

21 Q. What's your position?

22 A. I'm a Captain.

23 Q. And how long have you been a Captain?

24 A. Since 1995, December of 1995.

25 Q. And can you briefly describe for the



1 Arbitrator your duties as a Captain with the  
2 New Philadelphia Police Department?

3 A. Currently, I'm midnight shift Captain. I  
4 supervise the midnight shift from 10 p.m. to 6  
5 a.m.

6 Q. What's involved with supervising the midnight  
7 shift?

8 A. Just making sure that everybody is doing what  
9 they're supposed to do. What they need to  
10 do. Reports are done. Oversee, just in  
11 general, the midnight shift. What's going on.

12 Q. Okay. Do you know David Cimperman?

13 A. Yes.

14 Q. And how long have you known Mr. Cimperman?

15 A. I've known him since he's been hired, but I  
16 can't exactly quote when he did get hired.  
17 I'd say maybe '94ish, I'm thinking, so six  
18 years, seven years.

19 Q. Has Mr. Cimperman ever been on your shift?

20 A. No.

21 Q. Have you ever had direct supervision over Mr.  
22 Cimperman?

23 A. Maybe spotted days here and there, but he's  
24 never been on the shift I was supervising on a  
25 full-time basis. It might be a time that he

1           come off for overtime and I might be the  
2           Captain of that shift, but as far as -- prior  
3           to being night shift Captain, I was afternoon  
4           shift Captain five years prior, and I don't  
5           recall Dave Cimperman ever being on my shift.

6       Q.   Did there come a point in time when you began  
7           an investigation regarding a complaint about  
8           Mr. Cimperman?

9       A.   Yes.

10      Q.   And can you describe the facts and  
11           circumstances that gave rise to this  
12           investigation?

13      A.   Which one?

14      Q.   How many investigations have you been involved  
15           with involving Mr. Cimperman?

16      A.   Three.

17      Q.   Well, tell us about the first one.

18      A.   The first one was, there was a photo that got  
19           generated and I investigated a complaint that  
20           was filed by Officer Cimperman. It was not a  
21           complaint against Dave Cimperman.

22      Q.   Okay.

23      A.   It was filed on his behalf and I did the  
24           investigation on that. It involved him, as  
25           far as being the victim, I guess, is what you

1 want to call it.

2 Q. What was Mr. Cimperman's complaint?

3 A. His complaint was that there was a  
4 computer-generated photo of an obscene  
5 nature. It was a photo of a black male laying  
6 on a couch nude and Officer Cimperman's  
7 picture had been transposed onto this photo in  
8 place of the black male's face.

9 Q. Do you recall when you first became aware of  
10 this photo?

11 A. April, May, maybe, of 2000.

12 Q. When you first saw the photo, what did you do?

13 A. When I first saw the photo, it was shown to me  
14 out of concern for my dispatcher on afternoon  
15 shift, because this thing was floating around  
16 and I told her to put it away. No one knew  
17 where it came from. She didn't tell me where  
18 it came from. I didn't know. I said, "Put  
19 that away. I don't want to see it again."

20 It wasn't hers and the next thing I  
21 heard was, you know, this complaint from Dave  
22 Cimperman and it involved my afternoon shift  
23 guys that I supervised.

24 Q. How did you find that out?

25 A. It wasn't any big secret. I mean, the guys

1           came to me and told me what they did.

2       Q.    Why would they do this to Mr. Cimperman? Is  
3           there something peculiar about Mr. Cimperman  
4           or about him that would cause them to do this?

5       A.    Not to my knowledge. I mean, no one ever gave  
6           me an explanation other than it was stupid.

7           It was just a joke. It was just in fun.

8           That's the only thing they told me.

9       Q.    And who assigned you to investigate Mr.  
10           Cimperman's complaint?

11      A.    Chief Staggers.

12      Q.    So when you first learned about it, you told  
13           the dispatcher to get rid of it or --

14      A.    Yeah, "Get rid of it. I don't want to see  
15           it. Get it out of here."

16      Q.    And other than that, you didn't bring it to  
17           the Chief's attention at that point?

18      A.    No, I did not.

19      Q.    Why not?

20      A.    She presented this to me as, "This is on Dave  
21           Cimperman's computer on his web site," or  
22           whatever. I'm not a computer literate person,  
23           but, "On his site," or "this was pulled off of  
24           his site." That's what she explained to me.

25      Q.    You and I are probably the only people in the

1 world that aren't computer literate.

2 A. Well, I am not.

3 Q. Well, neither am I, so, go ahead. Sorry.

4 A. And I told her to put it away. I didn't want  
5 to see it anymore.

6 Q. Do you know if that picture had been  
7 circulating in the Department?

8 A. No, it didn't. No, I didn't know where it  
9 came from. It was supposed to be Dave  
10 Cimperman's picture that they found on a web  
11 site. That's what was told to me.

12 Q. Okay. And did you ever talk to Dave about how  
13 you became involved in this?

14 A. I had a conversation with Dave Cimperman,  
15 yeah.

16 Q. And why did you have a conversation with Dave  
17 Cimperman?

18 A. Well, I was attempting to get more information  
19 off of him for my investigation to try to help  
20 me out a little bit, you know, to see what he  
21 knew about the picture and what was going on  
22 with it.

23 Q. And to the best of your recollection, describe  
24 the conversation that you had with Dave.

25 A. It didn't go well. I mean, he wouldn't

1           cooperate with me. He told me he didn't --  
2           there was no reason for me to be investigating  
3           this thing, because I seen the picture and it  
4           was a conflict and I shouldn't be  
5           investigating it.

6       Q.    So he objected to you being the investigator?

7       A.    Yes.

8       Q.    Do you know if he was taping this conversation  
9           he was having with you?

10      A.    I don't have any knowledge.

11      Q.    Did he ever tell you, "Captain, I'm taping  
12           this conversation"?

13      A.    No.

14      Q.    Do you know now that he did tape that  
15           conversation?

16      A.    I have got information that a tape has  
17           surfaced. I have not heard it. I haven't  
18           seen it, but there's -- but I've been told  
19           that there's a tape, but I have never seen or  
20           heard of it.

21      Q.    And so you say that it didn't go well. He  
22           wasn't cooperating?

23      A.    No, he didn't cooperate.

24      Q.    And didn't he cooperate, because he thought  
25           you thought you had a conflict of interest?

1       A.    Yeah, there's no doubt in my mind that Dave  
2           Cimperman didn't trust me doing this  
3           investigation and he wasn't going to  
4           cooperate. I mean, he was very evasive and  
5           very --

6       Q.    Now, does this lack of trust stem from the  
7           fact that he thought you should have done  
8           something or does it precede that in time?

9                   MR. PIOTROWSKI: I'm going to  
10           object. How could he know where the lack of  
11           trust in my client came from?

12                   THE ARBITRATOR: Why don't you  
13           rephrase your question differently.

14       Q.    Prior to this, had you and Dave Cimperman had  
15           a problem dealing with each other?

16       A.    Yeah, it was -- I mean, Dave Cimperman and I  
17           don't have the same ideas. I mean, we don't  
18           think alike and we don't agree on a lot of the  
19           same issues.

20       Q.    And when did you first become aware of this?

21       A.    Well, probably his whole term of his  
22           employment. The complaints that would come  
23           in, just steadily you hear stuff, you know,  
24           everybody out there can't be lying.

25                   But it was just one thing after

1 another with complaints and I just, you know,  
2 come to the time where I defended him at  
3 first, you know, saying, "Give the guy a  
4 chance. He's here from Cleveland," but it  
5 just wasn't working. And my opinion was, you  
6 know, his employment here wasn't working.

7 Q. Prior to you being assigned to investigate Mr.  
8 Cimperman's complaint, had you ever  
9 disciplined him for anything?

10 A. Nothing more than verbal.

11 Q. You hadn't put anything in writing?

12 A. Correct.

13 Q. Just so that we have -- the Union's alleging  
14 that you were on a witch hunt and give us --  
15 give Mr. McIntosh some idea of the differences  
16 that you had with Mr. Cimperman. I believe  
17 you said a different philosophy or --

18 A. Yeah, just how we do our jobs and what we do  
19 do and what we don't do.

20 Q. Can you give us any examples of what you mean  
21 by that?

22 A. The one time --

23 MR. PIOTROWSKI: Objection. Are we  
24 about to discuss more uncharged prior conduct  
25 or misconduct?



1 MR. TSCHOLL: No, if you want me  
2 to respond, you've alleged that this is a  
3 witch hunt and I want to paint the background  
4 as to what the relationship between Mr.  
5 Cimperman and the Captain was at the time.

6 MR. PIOTROWSKI: So we're going to  
7 introduce this by the use of character  
8 evidence?

9 MR. TSCHOLL: We're not alleging  
10 that this had anything to do with the decision  
11 to discipline him, because I realize the  
12 contract has a two-year prohibition for  
13 previous discipline, so this is just to  
14 provide a background for the Arbitrator  
15 regarding your allegations of the witch hunt.

16 MR. PIOTROWSKI: Impermissible  
17 character evidence is that evidence which is  
18 more prejudicial than probative. We are about  
19 to discuss an incident that, I'm assuming, was  
20 never charged as misconduct, was never brought  
21 up in the Union process for response from the  
22 Union or the individual. And we're going to  
23 offer it as evidence that my guy's wrong.

24 Now, the only permissible conclusion  
25 there is that he's wrong is because he was

1 wrong in the past, which is where we get the  
2 impermissible character evidence and I'm  
3 confused as to what we're discussing here, if  
4 we're not discussing the charges that were  
5 brought against him.

6 MR. TSCHOLL: Mike --

7 THE ARBITRATOR: Let me interject my  
8 thinking. I think the Rules of Evidence were  
9 generally thought of to protect the trier --  
10 the "unsophisticated" trier of facts from  
11 matters that a judge would feel would be  
12 improper. But for the judge to hear similar  
13 conversations, I doubt that there would be  
14 many reversals in the Appellate Court for that  
15 introduction for that type of evidence.

16 I sit here as the trier of facts, but  
17 I also sit here as the finder of the legal  
18 issues. I would suggest that we permit this  
19 line of questioning subject to the same motion  
20 to strike, so that it would not then become  
21 probative evidence if, in fact, it could be  
22 considered to be probative. Okay?

23 Do you see where I'm going? Does  
24 everybody understand what I'm saying? In  
25 other words, let's embark upon this line of

1 inquiry. If it begins to appear that this is  
2 uncharged conduct, as Mr. Piotrowski has  
3 characterized it, then I would suggest and  
4 would expect that he would make a motion to  
5 strike that evidence so it would not be part  
6 of my consideration under the facts.

7 MR. TSCHOLL: Very good.

8 THE ARBITRATOR: But to the extent  
9 the "witch hunt" comment was made in opening  
10 statement, I can understand your desire of  
11 counsel for the City to explore what he  
12 intends this for.

13 THE WITNESS: Can I correct some  
14 of my testimony now that you got my brain  
15 thinking here?

16 MR. TSCHOLL: Yes, go ahead.

17 THE WITNESS: There was a  
18 six-month period when I got bumped to midnight  
19 shift that officer Dave Cimperman was on my  
20 shift for six months. I can't -- it wasn't in  
21 2000. I believe -- I think it was at the end  
22 of '99. I think the last six months of '99, I  
23 do believe is when I got bumped to midnight  
24 shift.

25 BY MR. TSCHOLL:

1 Q. Okay. Well, I'd like to, again, go back to  
2 the question and I appreciate that your memory  
3 has been refreshed, but I'd like you to talk  
4 about these differences, these philosophical  
5 differences that you've described.

6 A. One of the problems I had with Dave Cimperman,  
7 he had a big problem with honoring subpoenas  
8 from the court; serving subpoenas and then not  
9 showing up, whether he forgot or slept in or  
10 whatever.

11 Us as Captains, whether he was on our  
12 shift or not, will catch the blunt of that  
13 from the court; when they'd have a court case  
14 and the arresting officer wouldn't show up.

15 I do believe there was stuff like  
16 that brought to the Chief's attention and I do  
17 believe there was discipline.

18 I had one instance, that six months I  
19 was on there, that Officer Cimperman didn't  
20 show up for court and I knew, just about as  
21 sure as I was standing there, that if I wrote  
22 him up on this and shipped him to the Chief,  
23 he was going to get suspended. He was going  
24 to get some time off. So I did a, not on the  
25 record, just kind of a butt chewing type of

1 deal and let it go at that.

2 Q. Other than that problem, I believe that you  
3 used the term "philosophical," which my  
4 understanding of that term is that there's a  
5 difference in the way of thinking about things  
6 and approaching problems. Was that what you  
7 meant by that?

8 A. Well, yeah.

9 Q. Could you explain yourself?

10 A. To make sense? A lot of the big problems  
11 came -- a lot of the problems for me came from  
12 the period of time when Cimperman was promoted  
13 to Captain, as far as work ethics and what was  
14 going on at the Police Department and how the  
15 shift was being run.

16 Q. Prior to that time, you can't pinpoint  
17 anything?

18 A. I mean, I can pinpoint stuff that -- there's  
19 all kinds of alleges there, but you can't  
20 prove any of it. I mean, the phone calls we  
21 used to take and no one would write anything  
22 down, you know, or a lot of anonymous calls.  
23 And I just can't believe that all of them are  
24 liars. I mean, I can go in a lot more  
25 specifics of a lot of what the phone calls

1           were, if that's want you me to do?

2       Q.     No, I'm really not interested. I'm just  
3           trying to understand why you felt the way that  
4           you did about Mr. Cimperman.

5       A.     The bottom line is all these people cannot be  
6           liars, everybody. And the public sector, I  
7           mean, you can't go into Speedway or a gas  
8           station and grab a cup of coffee without --

9                   MR. PIOTROWSKI: I'm going to  
10          object.

11                  MR. TSCHOLL:        Okay. Well, I think  
12          I won't pursue that anymore.

13                  THE ARBITRATOR: Do you have a motion  
14          with respect to testimony previously given?

15                  MR. PIOTROWSKI: I would move to  
16          strike anything from my last conversation with  
17          my last objection until now. I don't feel  
18          that any of it is particularly probative with  
19          regard to the charges at hand.

20                  MR. TSCHOLL:        I object to that  
21          because I do think that this does explain why  
22          Captain Calderon felt the way that he did  
23          about Mr. Cimperman. And, at least, you know,  
24          whether they were valid or not, it certainly  
25          explains the way that he felt about Mr.

1           Cimperman. Even though that nothing was --  
2           Mr. Cimperman was not brought up on charges  
3           and there was no disciplinary action, it  
4           certainly does explain what Captain Calderon  
5           thought of Mr. Cimperman and is the background  
6           and basis, I think, for moving forward.

7                   THE ARBITRATOR: I think with respect  
8           to the testimony of the court subpoenas as  
9           past uncharged conduct, I'll sustain the  
10          motion to strike.

11                   The other differences of opinion on  
12          how the shift should be run and he was  
13          promoted to Captain, I will overrule.

14                   I think the testimony with respect to  
15          the number of anonymous phone calls that he  
16          can't believe were all liars, sounds like  
17          speculation. I'm going to sustain the motion  
18          to strike that.

19                   I think I've pretty much covered the  
20          essence of his testimony and do you wish to  
21          comment further on what I ruled?

22                   MR. TSCHOLL:       No, I don't.

23                   THE ARBITRATOR: Continue.

24          BY MR. TSCHOLL:

25          Q.    I think you said there were three things that

1           you investigated. The first one was you  
2           actually investigated Mr. Cimperman's  
3           complaint?

4       A.    Correct.

5       Q.    And how did that investigation conclude?

6       A.    There were several individuals on the  
7           afternoon shift. I shipped the report to the  
8           Chief and there was a disciplinary hearing and  
9           they all received a suspension.

10      Q.    Do you recall who those individuals were?

11      A.    Officer Mike Henry, Officer Larry Hootman,  
12           Officer Rocky Dusenberry. I do believe that's  
13           it.

14      Q.    Okay. And take us to the second  
15           investigation.

16      A.    The second investigation became as a result of  
17           the first investigation. During the course of  
18           the investigating, I received a complaint of  
19           the car radios and the car radio in Car 024  
20           and a portable radio carried by Officer  
21           Dusenberry, being reprogrammed to have a scan  
22           mode, a phone mode and a possible pager  
23           mode --

24      Q.    And why were you --

25      A.    -- which our Department doesn't have.



1 Q. And why did that concern you?

2 A. It's a safety issue. I mean, we hire Staley's  
3 to do our radios. Okay? And that's why I  
4 took the radios to Staley's to see if they did  
5 this. You know, see if they programmed these  
6 radios to do this scanning and stuff.

7 Q. Why is it a safety concern?

8 A. Well, communication is our lifeline. I mean,  
9 this is where we communicate and if we need  
10 help or if another officer needs help, it's  
11 right here on our shoulder when we're out of  
12 that car or on that car radio when we're in  
13 our car.

14 If it's not going to work, we can't  
15 communicate with each other and when you have  
16 that car radio with a scan feature with a  
17 possibility of scanning 20 some police  
18 departments and villages and all this stuff,  
19 and we have no priority channel, okay? Which  
20 a priority channel means, that if you're  
21 scanning and Midvale has traffic for their  
22 dispatcher, who might be the 911 Center, and  
23 you're hearing them put out a dog barking call  
24 and your officer is screaming for a Code 10  
25 somewhere on a traffic stop - which a Code 10

1 is a distress call for help - you're not going  
2 to hear your officer calling for help, because  
3 you're hearing that Midvale officer getting a  
4 call about a dog barking.

5 Because our radios will not click  
6 back onto the New Philadelphia frequency. It  
7 doesn't have what's called a priority  
8 channel. It's not a priority link. You would  
9 not hear your channel, your calls, if you're  
10 scanning and somebody else has traffic. It  
11 happens. You know, it's very likely.

12 We had an instance with this radio of  
13 Rocky Dusenberry's. He's trying to get ahold  
14 of the fire department to tell them that  
15 there's smoke coming out of a house and he  
16 can't do it, because the radio is not  
17 programmed right.

18 Like I said, that's why we hire  
19 Staley's. They're the authorized Motorola  
20 dealer to do these radios and then we have an  
21 unauthorized person reprogramming them to scan  
22 and have phone lines. The phone lines tie up  
23 the 911 lines. It's just a big safety issue.

24 Q. We learned from Kenny Howell that these phones  
25 also had a pager feature where officers could

1           communicate with just each other --

2       A.    I guarantee you that Kenny Howell knows a  
3           thousand times more than I ever can think of  
4           knowing about what these radios can do.

5                    I never saw anybody use a page  
6           feature.  Okay?  He told me it was in there,  
7           but I don't have any idea how it works or what  
8           works or, you know, what -- page who, page  
9           what, you know.  I don't know.

10       Q.   We've also learned from Kenny that telephone  
11           calls can be made on untaped lines?

12       A.   Yes.

13       Q.   Is that a concern?

14       A.   Yeah, a taped phone line is one of our -- I  
15           mean, it helps you all the time.  I mean, on a  
16           safety thing where you're getting a call --  
17           and a lot of times somebody will be really  
18           emotional and crying and you can't understand  
19           what they said and then they hang up.  Well,  
20           if you play that tape back, you'll hear.  You  
21           hear -- if you play it a couple of times you  
22           might be able to tell that they said Fourth  
23           Street, but you don't know the address.

24                   And taped phone lines, you know, we  
25           tape them for a reason.  It protects us and

1 the caller.

2 Q. So all the police lines that the public calls  
3 in on or that the police officers use,  
4 normally are taped lines; is that correct?

5 A. Yes, with we have three lines coming in that  
6 are taped. There are untaped lines that go  
7 through Municipal Court lines. When you're  
8 calling someone on the phone for police  
9 business, you use a taped line.

10 Q. So as a result of receiving this information  
11 from Rocky Dusenberry about -- well, what did  
12 Rocky tell you?

13 A. Rocky told me that his portable had been -- he  
14 gave his portable to Dave Cimperman. Dave  
15 Cimperman took it and reprogrammed it and gave  
16 it back to him with the scan, the phone, the  
17 page feature. And then Cimperman told him how  
18 to work it.

19 Q. And did you do anything after you became aware  
20 of this situation?

21 A. I took possession of Officer Dusenberry's  
22 radio and issued him another one, another  
23 portable. I had Captain DiMatteo get ahold of  
24 Officer Cimperman's City-issued portable  
25 radio.

1                   At that time he was not a Captain and  
2           Captain DiMatteo was his Captain and I had him  
3           get the radio.

4       Q.   Now there's two portables in front of you.  
5           Can you identify those?

6       A.   Yeah, this one here -- this is Rocky  
7           Dusenberry's radio, yes. (Indicating.)

8       Q.   And how do you know that?

9       A.   The main reason I know is because this one is  
10          Cimperman's radio and before he was a Captain,  
11          he was Unit 13 and he's got his initials on  
12          it.

13      Q.   So where have these radios been since you took  
14          Rocky's and you had DiMatteo get Mr.  
15          Cimperman's?

16      A.   They've been with me down at Staley's.  
17          They've been in my locker and this morning  
18          about 10:00, I sat them right here on this  
19          table.

20      Q.   So they've always been in your possession?

21      A.   Yes.

22      Q.   And at some point in time, did you take these  
23          radios to Staley's?

24      A.   Yes.

25      Q.   When did that occur?

1 A. Well, I've taken them twice. The first time I  
2 did this was back in June -- May, June when  
3 this all was coming about.

4 This is Cimperman's radio. When you  
5 put a live battery on it, it reads "Fail  
6 01/92" or something like that. Something  
7 along those lines. It's a fail code that the  
8 radio doesn't work.

9 Q. Do you know what that means?

10 A. I don't have a clue. I only know what Kenny  
11 told me it means.

12 Q. What did Kenny tell you?

13 MR. PIOTROWSKI: Objection. Kenny  
14 has already testified as to what it means.

15 MR. TSCHOLL: I'll withdraw the  
16 question.

17 THE WITNESS: No, I don't know  
18 what it means. I just know it doesn't work.

19 MR. PIOTROWSKI: The question was  
20 withdrawn.

21 THE WITNESS: Okay.

22 MR. PIOTROWSKI: Okay.

23 BY MR. TSCHOLL:

24 Q. Was there anything that you come to learn that  
25 Mr. Cimperman did anything improper with that

1 radio?

2 A. Once again -- with his radio?

3 Q. Yes, this radio.

4 A. Yes, from what Kenny told me.

5 Q. Okay. And what was improper?

6 A. This radio --

7 MR. PIOTROWSKI: I'm going to  
8 object. Kenny was here. Kenny testified.  
9 He's about to tell us what Kenny said and he's  
10 going to interpret Kenny's words back then.

11 MR. TSCHOLL: You're mistaken.

12 MR. PIOTROWSKI: He's not going to  
13 interpret Kenny's -- the statement started  
14 out, "Kenny said," that's referred to as  
15 hearsay and since Kenny was just here, we  
16 don't need that hearsay.

17 MR. TSCHOLL: I never asked Kenny  
18 what was improper. Kenny doesn't know what's  
19 improper. He's not interpreting the rules and  
20 regulations.

21 BY MR. TSCHOLL:

22 Q. The question is: What did you learn that  
23 caused you to believe that Mr. Cimperman did  
24 something improper with that radio?

25 A. It said "Fail 01/92" that's what told me

1 something was wrong.

2 MR. PIOTROWSKI: Objection. And we  
3 have established that he doesn't have any idea  
4 what "Fail 01/92" means and all he can do is  
5 repeat what Kenny told him and we had Kenny  
6 here.

7 This isn't a nicety. It's not a  
8 technicality. It's a fact that Kenny  
9 testified. I cross-examined Kenny. Now  
10 you're going to have him testify and I don't  
11 get a chance to cross-examine what Kenny says  
12 this time, because poor Captain Calderon here  
13 doesn't know the answers to the questions I  
14 need to ask Kenny.

15 MR. TSCHOLL: Well, I've asked the  
16 question. It's up to you.

17 THE ARBITRATOR: We have in evidence  
18 what Kenny said was wrong with the radio and  
19 what caused this improper function. You could  
20 phrase the question based on that which is in  
21 evidence and I understand you're trying to  
22 identify what impact that has on the policies  
23 and procedures of the department, so --

24 MR. TSCHOLL: I'll phrase it that  
25 way.



1 BY MR. TSCHOLL:

2 Q. Did what you learned have any impact on the  
3 policies and procedures as they exist in the  
4 Philly Police Department?

5 A. Yes.

6 Q. And what were those?

7 A. We have Standards of Conduct that prohibit the  
8 improper use of City equipment, unauthorized  
9 use and improper use of the City equipment in  
10 changing it without permission to do so and  
11 it's a violation of the Standard of Conduct.

12 Q. And why is that a concern?

13 A. It's a safety issue. That's our communication  
14 system.

15 Q. What you've described before; is that correct?

16 A. Yes.

17 Q. Anything else? I mean, other than what you've  
18 already told us?

19 A. I can't emphasize enough the safety issue.  
20 The safety of any officer who picks up that  
21 radio. It has to work.

22 Q. And do you consider this a major or minor  
23 problem?

24 A. It's a major problem.

25 Q. What about Rocky's radio?

1 A. This is Rocky's radio. (Indicating.)

2 Q. Did what you learned cause you to be concerned  
3 regarding your rules and regulations, what had  
4 been done to that radio?

5 A. Yes, this radio had been tampered with and it  
6 falls under the same category, it doesn't work  
7 properly and that's exactly what I've been  
8 preaching about, about the safety issue, when  
9 you have somebody reprogramming a radio that  
10 does not belong to them. They have no  
11 authorization to do it and it doesn't work  
12 right.

13 When we pick these things up, they've  
14 got to work. We have faith in Staley's, not  
15 in somebody else when we don't know who is  
16 doing what.

17 Q. When officers first become officers in the New  
18 Philly Police Department, is there some type  
19 of orientation where they become acquainted  
20 with these portables or mobile radios?

21 A. There's a nine-week training program that --

22 Q. In the Philly Police Department?

23 A. Yes, we have field training officers and I am  
24 completely unaware of what they teach them. I  
25 hope they're teaching them how to use a

1           portable radio.

2       Q.    You've never been a field training officer?

3       A.    No.   No.   No.   When Officer Cimperman started,  
4           I was his training officer, but we didn't have  
5           the technical field training officers thing  
6           where it was set up in stages and steps.   It  
7           was --

8       Q.    More formal?

9       A.    Yeah, it's a whole lot more formal now.  
10          There's forms to fill out.

11      Q.    Incidentally, Captain, you've told us that you  
12          became a Captain in, I think, 1995.   How long  
13          have you been with the Philly Police  
14          Department?

15      A.    Since 1990.

16      Q.    So from 1990 to 1995, what was your rank?

17      A.    I was an Officer.

18      Q.    Patrol Officer?

19      A.    Patrol Officer.

20      Q.    Now, other than portable phones, did you have  
21          Staley's check out any other radios?

22      A.    I had Kenny down at Staley's check out Car  
23          024.

24      Q.    Was there a problem with that that caused you  
25          a concern regarding the policy?

1 A. The scan mode in Car 024 causes big concern  
2 with, as I mentioned before, the fact that it  
3 can scan and you're not going to hear the  
4 Philly Police Department calls when they're  
5 put out or someone calling for help or, you  
6 know.

7 Q. Now, as a result of the information that you  
8 learned about, did you take any action?

9 A. Yeah, I did another complete investigative  
10 report and sent it to the Chief.

11 Q. Do you have the Witness Exhibit list in front  
12 of you? Would you please turn to Exhibit  
13 Numbers 15 and 16. Would you please take a  
14 look at these documents and I'm going to ask  
15 you some questions about them. When you're  
16 done, if you'd look up so I know you're ready  
17 for questions.

18 A. Yeah.

19 Q. Can you identify City Exhibit 15 and 16?

20 A. Exhibits 15 and 16 is a typed report, two-page  
21 report, that I typed and submitted to Chief  
22 Staggers.

23 Q. And what was the purpose of this report?

24 A. To apprise the Chief of Police that I felt  
25 there was some tampering with the radios that

1           was unauthorized. I emphasized the safety  
2           issue in the summary and why I felt there was  
3           a problem with what was happening with the  
4           radios.

5       Q.   And do you know whether or not the Chief --  
6           did the Chief take any action as result of  
7           receiving this report?

8       A.   I don't know. I mean, I think if there was  
9           disciplinary stuff done shy of the termination  
10          thing, I don't know. I don't know. I mean, I  
11          think it's included in the termination thing.

12               Once you submit these reports, you're  
13          out of the loop. They don't tell you  
14          anything.

15       Q.   So you submitted this report to the Chief?

16       A.   Yes. The only thing the Chief told me to do  
17          was hold onto the radios.

18       Q.   And what about radio 24, do you know if that  
19          radio is in the same condition -- do you know  
20          the condition of that radio?

21       A.   Yeah, the same as it was when I had it checked  
22          at Staley's the first and second time.

23       Q.   And do you know why it was in the same  
24          condition?

25       A.   To preserve as evidence as the best -- you

1 know, to show what had been done and show that  
2 it does scan and do the things it's not  
3 supposed to do.

4 Q. Now, do you recall a conversation with Mr.  
5 Cimperman in the spring or summer of 1997,  
6 telling him that he could add features to the  
7 car such as: brackets or change the map light  
8 or make adjustments or modifications to City  
9 equipment?

10 A. No. Change the map light? We order the map  
11 lights and had them installed. I mean, if the  
12 bulb burnt out, I'd surely give you permission  
13 to change the bulb in the map light.

14 He's had several conversations with  
15 me requesting to put radios in. He got the  
16 same response from me as it has to go through  
17 him for radios. (Indicating.)

18 Q. What do you mean "put a radio in"?

19 A. He wanted to put in different citizen band  
20 radios and he, basically, wanted the City to  
21 buy these radios that he could find on the  
22 Internet and put in.

23 He wanted communication with highway  
24 patrol, is what his main goal, I do believe,  
25 was, was communication with the highway patrol

1           and he had access to some radios that could be  
2           put in there and, you know --

3       Q.    Do you recall when you had these conversations  
4           with him?

5       A.    There were conversations regarding radios with  
6           Officer Cimperman all the time.

7       Q.    Mr. Cimperman had an interest in radios?

8       A.    Oh, yeah.

9       Q.    And how do you know that?

10      A.    Just by his conversation. I mean, you know, I  
11           mean --

12      Q.    Were you aware that he had a business in the  
13           City when he first started working here or  
14           shortly thereafter?

15      A.    Yeah, I think it was a cellular phone  
16           business.

17      Q.    Do you know anything else about this business?

18      A.    No, no, other than it was downtown.

19      Q.    Did you ever say anything that you can recall  
20           to Mr. Cimperman which would have led him to  
21           believe that he could unilaterally modify the  
22           City's radio communication system?

23      A.    Absolutely not. I don't have the authority to  
24           give him to do that and he knows that.

25      Q.    Now, after you say that you took these radios

1 to Staley's twice, you told us about the first  
2 time. What about the second time?

3 A. The second time there was computer printouts  
4 that were done.

5 Q. Okay. If you would turn to City Exhibits 55  
6 through 92. Can you identify these documents?

7 A. A page at a time?

8 Q. No, just in general.

9 A. Yeah, these are the computer printouts that  
10 were done when I was standing there and one  
11 wasn't done when I was standing there -- two  
12 of them weren't done when I was standing  
13 there. Two were. There's four done. Two  
14 were done when I was standing there and two  
15 weren't.

16 Q. And when you say there were four done, four  
17 what?

18 A. Four computer printouts on radios of the New  
19 Philadelphia Police Department.

20 Q. And who did these?

21 A. Kenny.

22 Q. And who asked him to do them?

23 A. I asked him to do Cimperman's portable and  
24 Rocky's portable and I can't -- I don't know  
25 who asked -- I think I know who asked him to



1 do the two cars.

2 Q. Okay. And do you know which cars he did?

3 A. Yeah, he did 925 and 024.

4 Q. Now, you've been accused from the Union of  
5 engaging in a witch hunt against Captain  
6 Cimperman, what's your response to that  
7 accusation?

8 A. I cannot see how it can possibly be my fault  
9 that these radios, and whatever else went on,  
10 could possibly be my fault. Everything is  
11 somebody else's fault. It's never Dave  
12 Cimperman's. It's been, you know --

13 MR. PIOTROWSKI: Objection. We're  
14 back in the realm of character evidence?

15 A. Yeah, I know, but -- it's just like the people  
16 we arrest. It's always somebody else's  
17 fault. Like I say, I can't see how I could  
18 have a witch hunt by having a complaint that's  
19 a violation of the Standard of Conduct. The  
20 guy has been warned a thousand times before  
21 and I don't know how that's my fault.

22 Q. Warned a thousand times about what?

23 A. Just different stuff. Like I say, just warned  
24 and warned and warned about improper  
25 behavior. We're going right back into -- you

1 know.

2 I get presented with a blatant  
3 violation of the Standard of Conduct and I  
4 investigate it and I'm on a witch hunt. I  
5 just don't see how. I don't see how.

6 Q. Are you a member of the Union?

7 A. Yeah, I'm a member of the same Union as every  
8 other police officer is.

9 Q. And that Union is the FOP?

10 A. The FOP Union Lodge 4.

11 MR. PIOTROWSKI: Objection. Where  
12 exactly are you going with this, Bob?

13 MR. TSCHOLL: Pardon?

14 MR. PIOTROWSKI: Where exactly are  
15 you going with this?

16 MR. TSCHOLL: I'm done with it. I  
17 have nothing else to ask him on that subject.

18 THE WITNESS: Can I say one more  
19 thing or not?

20 MR. TSCHOLL: Sure.

21 THE WITNESS: Nowhere in any of my  
22 reports, in any of the investigations does it  
23 mention anything about termination or get the  
24 guy fired or anything like that. You know, I  
25 don't believe he had any business being a

1 Captain and I made that very well known in a  
2 venting letter to Chief Staggers, how I felt  
3 there with some other issues that were pretty  
4 serious.

5 BY MR. TSCHOLL:

6 Q. Are you aware that the City was required to  
7 give the position, the rank, to Mr. Cimperman  
8 because he was the only one that passed the  
9 test?

10 A. That's what I understand, yes. I didn't have  
11 a problem with him being a Captain until  
12 the -- I mean.

13 Q. Until what?

14 A. The other issues came up, when I fired off the  
15 letter to Chief Staggers about what had  
16 transpired in a very short period of time.

17 Q. I'm sure that Mr. Piotrowski is going to ask  
18 you about that letter and I will conclude my  
19 Direct Examination of you and let Mr.  
20 Piotrowski have at you.

21 THE ARBITRATOR: Cross?

22 MR. PIOTROWSKI: Certainly.

23 CROSS-EXAMINATION

24 BY MR. PIOTROWSKI:

25 Q. Captain Calderon, you began your first

1 investigation of Captain Cimperman back when  
2 he was an Officer and that was in early May of  
3 2000, right?

4 A. Yeah, that sounds about right, April, May.

5 Q. So if I told you that the memo from Cimperman  
6 to the Chief complaining that you were doing  
7 the investigation, and that you were involved  
8 and shouldn't be doing the investigation, was  
9 dated May 10th, that convinces you that right  
10 around the early part of May, you were doing  
11 this investigation; isn't that true?

12 A. I don't understand what you're saying, sir.  
13 I'm not following you.

14 Q. Well, Cimperman complained that you were doing  
15 the investigation about the photograph, right?

16 A. Yeah, he complained to me.

17 Q. And you know he complained to the Chief, too?

18 A. Well, yeah.

19 Q. Now, he complained right in the middle of that  
20 investigation, didn't he? You had already  
21 talked to him. He had said he didn't think  
22 you should be investigating, because you were  
23 involved, etc., etc.?

24 A. I don't know at what point in time -- I can't  
25 say whether he wrote that letter before I

1           talked to him or after I talked to him. I  
2           don't know.

3       Q.    Okay. Were you investigating on May 10th of  
4           2000?

5       A.    Yeah, right in the middle of it, yeah.

6       Q.    Do you remember when you talked to Rocky  
7           Dusenberry?

8       A.    No. And my report indicates at some point in  
9           time in early, you know --

10      Q.    Right.

11      A.    There's no --

12      Q.    But that would have been May, right?

13      A.    Yeah, because the reason this surfaced --  
14           happened -- I mean, one of the problems  
15           happened at a retirement party which was about  
16           April the 26th, 28th, in that area.

17      Q.    And that's where some other people might have  
18           seen this picture?

19      A.    Yeah, as far as I was concerned it was a big  
20           problem.

21      Q.    And shortly after you had to do this  
22           investigation. You had to talk to all these  
23           people that had been mentioned in Dave  
24           Cimperman's complaint, right?

25      A.    Yes.

1 Q. Now, do you recall how long it took you to  
2 talk to all those people?

3 A. I don't remember exactly. I talked to them  
4 and then I went back to them and asked for  
5 statements, you know.

6 Q. Two weeks? Three weeks?

7 A. I don't know. Like I say, I don't know.

8 Q. Did you know Cimperman was going to be the  
9 next Captain when this was going on?

10 A. No, they hadn't even --

11 Q. Scored the test yet?

12 A. The guy was just retiring.

13 Q. Okay.

14 A. And they had not even, you know --

15 Q. Tested?

16 A. -- thought about it.

17 Q. Had they already given the test?

18 A. I don't know when they gave the test. I'm  
19 sure I did know at the time, but --

20 Q. He was promoted June 30th.

21 A. Okay.

22 Q. And backdating from there when this  
23 investigation -- I mean, we know this  
24 investigation took place in the beginning of  
25 May. You talked to Dusenberry at the

1 beginning of May?

2 A. Yeah.

3 Q. Dusenberry fills out his statement. He makes  
4 a comment about glass houses. That's how the  
5 radio issue comes to your attention.  
6 Dusenberry said, "People in glass houses  
7 shouldn't be throwing stones."

8 A. Right, yeah.

9 Q. And you say, "What are you talking about?"  
10 And he says, "Well, my radio in Car 24 --

11 A. No. No. No. That's not the way that  
12 transpired.

13 Q. No? Well, can you tell us how that  
14 transpired?

15 A. He made the comment of, "People who live in  
16 glass houses shouldn't throw stones," but I  
17 didn't draw it out of him. He just  
18 automatically reached on the side of his side  
19 there and said, "Look at this," and pulled out  
20 his portable radio. It wasn't from any  
21 prompting from me.

22 Q. Okay.

23 A. I wasn't looking for any more investigations  
24 to do.

25 Q. And he says, "It scans and all this stuff,

1           because I gave it to Cimperman and he made it  
2           do this stuff"?

3       A.     That's what he told me.

4       Q.     Okay. And that was in early May?

5       A.     Yes.

6       Q.     How soon did you tell the Chief?

7       A.     After I took the radios to Staley's to verify  
8           what was on the radios, I went and asked the  
9           Chief if he had authorized any of this and he  
10          told me no and I gave him a brief scenario of  
11          what I was running into here and I remember  
12          telling him, "I'm in the middle of the picture  
13          deal. I'm investigating the picture deal."  
14          And he said, "Well, I want this investigated."  
15          And, I mean, I'll tell you straightforward, I  
16          tried to make him give it to Captain DiMatteo,  
17          but he made me do it.

18      Q.     So you actually didn't have any interest in  
19           doing this then, this investigation or the  
20           picture investigation, did you?

21      A.     The picture investigation I had no problem  
22           doing, because it involved my guys on my  
23           shift. That's just a gentleman's agreement  
24           that the Captains here have. If your guy did  
25           something or is accused of doing something and



1           there's an investigation, you investigate your  
2           own guy. We don't have a large enough  
3           department to justify, I guess, an internal  
4           affairs or anything like that, so it was just,  
5           if we got a complaint, it was shipped to the  
6           Captain, of whoever the Captain was. That was  
7           my grounds to get this one investigated  
8           Captain DiMatteo.

9       Q.    When did you notify Cimperman that you were  
10           investigating him for radio tampering?

11    A.    I never told -- that, I believe, other than  
12           handing him the -- I'm trying to think if I  
13           wrote him on a thing for the Chief. I never  
14           called him in and questioned him, is what I'm  
15           saying.

16    Q.    Okay.

17    A.    I never -- and the reason for that is the way  
18           the picture thing went I'm investigating  
19           something for him and it doesn't go well, I  
20           sure as heck can't imagine any cooperation  
21           when I'm investigating something where he's  
22           the accused, so it wasn't going to work.

23    Q.    Now, Section 17.2 of the contract says, "At  
24           the time an inquiry concerning a bargaining  
25           unit member occurs wherein disciplinary action

1 of record will or may result, the member will  
2 be immediately notified that such result is  
3 possible."

4 Did you ever tell Cimperman that you  
5 were starting an inquiry into his radio stuff?

6 A. Does that say the Captain will do that?

7 Q. It says, "At any time an inquiry starts." <sup>r</sup>  
8 it usually your job to do that?

9 A. No.

10 Q. So you don't have any knowledge of that notice  
11 going to --

12 A. I have no knowledge. It's not my cup of tea.

13 Q. Now, next question: You stated that your  
14 understanding from Kenny was that when the  
15 phone feature's used on the car mobile, it  
16 ties up the 911 line, right?

17 A. Yeah, it gets a whole lot more technical and I  
18 don't understand it.

19 Q. Kenny came in here and testified that it  
20 doesn't tie up a 911 line. It ties up a line  
21 owned by Staley's. Okay?

22 A. Okay.

23 Q. Now, it makes that somewhat less of a safety  
24 issue, doesn't it? It's just tying up a  
25 normal phone line instead of a 911 line?

1 A. Yeah, if that's what Kenny says. I mean, like  
2 I say, anything that I say pertaining to what  
3 these radios do, Kenny is the man, you know,  
4 that's -- you know, I don't know what he  
5 testified to, you know. I know the way it was  
6 explained to me by both him and Tim Staley,  
7 the owner of the business.

8 Q. Now, after your radio investigation got going  
9 and, I guess at this point, you've talked to  
10 Rocky, you've got a statement from Rocky.  
11 You've got Rocky's portable. You've gone and  
12 talked to Staley's. Staley's said, "We didn't  
13 do that." You go and get Cimperman's radio?

14 A. I had Captain DiMatteo get Cimperman's radio.

15 Q. Did Captain DiMatteo tell you that Captain  
16 Cimperman doesn't carry his department issued  
17 radio, but instead carries one that he owns  
18 himself?

19 A. When he handed me this radio, he told me that  
20 then.

21 Q. Okay. Did that surprise you?

22 A. No.

23 Q. You knew that Cimperman carried his own radio?

24 A. No, I did not know that.

25 Q. Okay. But it didn't surprise you because it

1           was Cimperman?

2       A.    It didn't surprise me that he would have his  
3           own radio.

4       Q.    Okay. And that he would carry it on duty

5       A.    And that he'd carry it on duty, right.

6       Q.    Is that something that's clearly and obviously  
7           a violation of procedure or is it okay for him  
8           to carry his own radio as long as it performs  
9           all the necessary functions?

10      A.    I don't know how Captain DiMatteo perceived  
11           that. That was his call.

12      Q.    Do you know if there was ever any discipline  
13           issued or counseling regarding carrying that  
14           radio?

15      A.    I don't know.

16      Q.    When you got Captain or then, Officer  
17           Cimperman's radio, was this also in early May  
18           or mid May?

19      A.    Yes, it had to be.

20      Q.    Well, I don't know, was it your job to issue  
21           him a replacement for the portable or would  
22           that have been DiMatteo's job?

23      A.    Right. And I gave him one.

24      Q.    Did he give you the replacement back?

25      A.    Yep.

1 Q. So you got both back?

2 A. Um-hum.

3 Q. Okay.

4 A. Yeah, you can't take equipment off somebody  
5 without replacing it.

6 Q. Yeah, obviously, if you're going to take his  
7 portable, you know he needs a portable to  
8 work, right?

9 A. Right.

10 Q. But in this situation, he has a spare of his  
11 own that he can carry.

12 Did Kenny tell you that the radio  
13 could come up with the Fail 01/92 Code if it's  
14 dropped?

15 A. No.

16 Q. Did he tell you if you submerge it, that it  
17 will happen?

18 A. No.

19 Q. Did he tell you that rust will do that to it?

20 A. No.

21 Q. Okay. Do you know of anyone, other than  
22 Staley's, that works on Motorola equipment in  
23 the area?

24 A. No.

25 Q. And were you aware when you investigated this,

1           that all of the functions that these portables  
2           were exhibiting, were inherent in the machine  
3           itself? In other words, did you know that  
4           every radio you had could do this if they just  
5           kind of unleashed it?

6       A.    If they programmed it to do that, I knew that  
7           our system had a whole lot of capabilities,  
8           more than what we were -- the Chief had  
9           authorized to be used.

10      Q.    Now, are there any cars that have scanners in  
11           them?

12      A.    Scanners in them?

13      Q.    Scanners, yes.

14      A.    Yes.

15      Q.    Do you know which cars have scanners?

16      A.    I don't know.

17      Q.    Who put those scanners in there? If you don't  
18           know, you can say, "I don't know."

19      A.    I don't know. I mean, we have an assigned  
20           car. Okay?

21      Q.    Okay.

22      A.    There's the Captain's car. There's a Car 2  
23           car. There's a Car 3 car. There's a Car 4  
24           car. There's a Car 5 car and there's a Car 6  
25           car. Every car has three guys on days,

1           afternoons and midnights who could possibly  
2           drive this car.

3                       These scanners in the cars --

4       Q.    It could be any one of the three guys driving  
5           the car?

6       A.    Yes.

7       Q.    And he could decide if he wants to be able to  
8           scan?

9       A.    Yes.

10      Q.    And is that okay as long as you're not  
11           actually screwing with the actual mobile radio  
12           that the department owns?

13      A.    I never gave anybody an okay to put a scanner  
14           and radio in a cruiser.

15      Q.    Do you know if the scanners are still in the  
16           cruisers now?

17      A.    I think they are. To the best of my  
18           knowledge, no one has ever taken them out.

19      Q.    Okay. Now, when DiMatteo comes back to you  
20           with two portables, one has got Fail 01/92 on  
21           it and one is the one that he just gave you,  
22           did he do that?

23      A.    No, he just gave me this one. (Indicating.)

24      Q.    What did he do with the other one?

25      A.    He left it laying on the desk.

1 Q. Well, he told you then that Cimperman carried  
2 his own portable, right?

3 A. Yes.

4 Q. And that Cimperman was going to continue to  
5 carry his own portable?

6 A. He didn't say that.

7 Q. Did you think that the portable that you were  
8 just handed was the one that he was carrying  
9 on a daily basis?

10 A. Yeah. What I asked for was the portable that  
11 was issued to Dave Cimperman.

12 Q. Okay.

13 A. And that's what I got.

14 Q. Okay. Did you think that the portable you got  
15 was the one he had been carrying prior to the  
16 time you asked for it?

17 A. Yes.

18 Q. Okay. And when Captain DiMatteo came back to  
19 you and said, "Here's Cimperman's portable,"  
20 did he tell you that he carries his own  
21 personally owned one, right?

22 A. Yeah, Captain DiMatteo told me he wasn't  
23 carrying this one, he had to go home and get  
24 it.

25 Q. He was carrying the other one?



1 A. Yes.

2 Q. And he's still got that one. Did you know  
3 whether or not he still had that one?

4 A. Who?

5 Q. The Cimperman owned radio, did you know if he  
6 had that still?

7 A. Did Officer Cimperman still have it?

8 Q. Yes.

9 A. Captain DiMatteo didn't tell me he took it.

10 Q. So you assumed he did?

11 A. I assumed that he did -- that he didn't take  
12 it. It was still in Dave's possession.

13 Q. If, in fact, the carrying of that radio was  
14 such a danger to the officer, Dave Cimperman,  
15 and other officers, why didn't you go tell him  
16 to take the standard programmed portable?

17 A. At that point in time, I didn't know exactly  
18 what was going on with these radios.

19 Q. But you, obviously, suspected that it was a  
20 reprogrammed radio on Dave Cimperman's hip,  
21 right?

22 A. Yeah, I could suspect, yeah, that there would  
23 be a problem with it.

24 Q. And you had taken Rocky Dusenberry's right  
25 away?

1 A. Yes.

2 Q. So why didn't you tell Cimperman to quit  
3 carrying his own and to carry a department  
4 issued one without any extra functions?

5 A. If that would have been done, it would have  
6 been done by Captain DiMatteo.

7 Q. So Captain DiMatteo didn't recognize this as  
8 the safety concern that you did?

9 A. He didn't know any more than I did at that  
10 point in time about what all we were talking  
11 about, in depth, with these radios.

12 Q. But from your earlier statement you obviously  
13 knew that the radio was a big safety issue,  
14 right? Any screwing with the radios is a  
15 safety problem, isn't it?

16 A. Yeah, by an unauthorized person. I mean, if  
17 you're going to mess with the radios, it's  
18 just not permitted. That's why we have the  
19 Standard of Conduct that explains it.

20 Q. Now, doesn't that Standard of Conduct have  
21 some progressive discipline function to it?  
22 In other words, if you can pay for the damage  
23 out of one year's paycheck or something, it's  
24 not necessarily a termination offense, isn't  
25 that a portion of that policy?

1 A. There's something like that, but I can't quote  
2 it.

3 Q. Okay. I believe 25 --

4 MR. TSCHOLL: I'm going to object  
5 to this line of questioning and the reason is:  
6 This witness has testified that after he did  
7 the investigation, he did not make the  
8 decision of discipline. That that decision  
9 was made by somebody else and not him. So  
10 what does it matter? This is not an  
11 appropriate question for this witness.

12 MR. PIOTROWSKI: He just testified  
13 that this was a clear violation of the  
14 Standard of Conduct.

15 MR. TSCHOLL: He did, but now  
16 you're asking him about progressive discipline  
17 though.

18 MR. PIOTROWSKI: It's part of that  
19 Standard of Conduct.

20 MR. TSCHOLL: But he didn't make  
21 the decision like --

22 THE ARBITRATOR: Where are we?

23 MR. TSCHOLL: Page 25 of the  
24 Exhibits.

25 THE ARBITRATOR: Off the record.

1 (Discussion held off record.)

2 BY MR. PIOTROWSKI:

3 Q. Now, what I'm calling the Witness's attention  
4 to is under Enforcement Guidelines. It talks  
5 about termination --

6 THE ARBITRATOR: I see it.

7 Q. "If it creates a substantial safety risk to  
8 another member or if the loss or damage to any  
9 equipment or property is substantial."

10 Substantial cost means that the  
11 normal member would not ordinarily be capable  
12 of replacing the equipment if costs were  
13 deducted from the member's annual salary.

14 That seems to suggest that as long as  
15 you don't break something expensive enough,  
16 you can get away with breaking it, right?

17 MR. TSCHOLL: I'm going to object  
18 to the question.

19 THE ARBITRATOR: Overruled.

20 A. You can interpret it however you want to.  
21 That's not how I interpret it.

22 THE ARBITRATOR: The question has  
23 been answered. Do you want to strike the  
24 answer? Let me tell you, when we start  
25 addressing these, we might examine whether or

1 not we can stipulate their admission. For  
2 example, this page 25 or C25, would seem to  
3 speak for itself and if you want to stipulate  
4 C25 in?

5 MR. TSCHOLL: I was going to wait  
6 until after I concluded my case to move for  
7 the admission of all of these, but that's  
8 fine. I don't --

9 THE ARBITRATOR: We can go off the  
10 record.

11 (Discussion held off record.)

12 BY MR. PIOTROWSKI:

13 Q. Let's go back to your report, which is on page  
14 15. Now, that starts, "In June or early July  
15 2000, it was brought to my attention that the  
16 police radio in Car 024 had been reprogrammed  
17 and was not capable of using the telephone  
18 feature."

19 That's not accurate, is it?

20 A. Nope.

21 Q. And it leaves out some key information,  
22 doesn't it? It also had the scan function?

23 THE ARBITRATOR: Where are you on  
24 this?

25 MR. PIOTROWSKI: Very top. First

1 line.

2 THE ARBITRATOR: Oh, okay.

3 A. The only thing I checked on 024 was the only  
4 thing I was showed, which was the phone  
5 feature.

6 Q. Okay. Who showed you that?

7 A. Rocky Dusenberry.

8 Q. Okay.

9 A. I mean, he didn't walk out and show me how to  
10 do it. He told me when he was telling me  
11 about his radio, that all you had to do to the  
12 radio in 024 to do the phone, was to do this.  
13 So I went out and I tried it and that's what  
14 it did.

15 I didn't know what all this phone  
16 did -- or the radio did, until I took it to  
17 Staley's.

18 Q. Okay. So Dusenberry's statement doesn't  
19 mention talking about Car 024, does it? It's  
20 on 17.

21 A. No, it strictly talks about his portable  
22 radio.

23 Q. Okay. Now, breaking out of that for a  
24 second. Rocky never was instructed on how to  
25 use the phone system by Officer Cimperman, was

1 he?

2 A. I can't answer that.

3 Q. Well, in his statement he never mentioned the  
4 phone system as something that Cimperman told  
5 him about, did he?

6 A. It's all page.

7 Q. Right. And he talked about the scanning,  
8 right?

9 A. Yeah.

10 Q. But there's no mention of the phone there. He  
11 says he just came across that later in playing  
12 with his portable, right?

13 A. Yeah, pertaining to his portable he came  
14 across the phone thing.

15 Q. Do you know when he became aware that 024 had  
16 been modified? Do you think it's still Rocky  
17 that told you that, or do you think it was  
18 just left out of his statement?

19 A. I know it was Rocky that brought it to my  
20 attention, because it was a real coincidence  
21 that it was brought to my attention by Rocky  
22 in the very -- oh, within one or two days. It  
23 was a real short period of time is when  
24 Captain DiMatteo brought it to my attention,  
25 too.

1 Q. So Captain DiMatteo came to you and said  
2 024 --

3 A. He said, "What's the deal with 024's radio  
4 that scans and does all this stuff?" And I  
5 said, "I'm working on it." That's all I said.

6 Q. Okay. On the second paragraph of page 2 of  
7 your report, you write that, "In mid July" --  
8 it starts with the man from Indiana called and  
9 complained on Cimperman.

10 Do you recall whether or not that  
11 individual knew Cimperman was a police officer  
12 when he called the department?

13 A. I don't know. I don't have any idea. I  
14 didn't take the call, you know, it was  
15 information supplied to me.

16 Q. Who gave you the information? It says Officer  
17 Larry Hootman has --

18 A. My memory was Denny Vitt.

19 Q. Took the call or --

20 A. Took the phone call.

21 Q. And he came to you or he went to Hootman and  
22 Hootman came to you?

23 A. I think Vitt came to me. I remember talking  
24 to Vitt and I remember talking to Hootman.

25 Q. And Hootman had done an investigation of this



1 on his own, hadn't he?

2 A. Not to my knowledge.

3 Q. Did you know that he --

4 A. He said he had talked to this guy, you know.  
5 He wasn't investigating this car radio -- this  
6 portable stuff. He wasn't investigating that.

7 Q. No, he was investigating this guy Ayers that  
8 claimed he hadn't gotten a shipment that he  
9 was owed.

10 A. There was an investigation going on, yes, but  
11 it wasn't being done by me.

12 Q. If it was being done by Hootman, is that a  
13 violation of the Policies and Procedures of  
14 the New Philadelphia Police Department?

15 A. I mean, it's a complaint. It should have gone  
16 to his Captain.

17 Q. Okay. Who would have been?

18 A. DiMatteo.

19 Q. This was in July, so Cimperman would have been  
20 his Captain, wouldn't he?

21 A. You say he got promoted in July?

22 Q. June 30th.

23 A. June 30th, okay, yeah. So that explains why  
24 he came to me.

25 Q. Now, your statement here assumes a couple of

1 things. The man sent Cimperman \$560 for the  
2 software, but never received it. Did you ever  
3 find out whether or not Mr. Ayers got his  
4 software?

5 A. Yeah, he did.

6 Q. Did you ever ask Cimperman about this  
7 incident?

8 A. Nope.

9 Q. Okay. Then you say Cimperman then put the  
10 software back on Ebay and tried to resell it.  
11 Okay, now, are you sure it was the same thing?

12 A. I was going with information supplied to me.

13 Q. By Hootman?

14 A. By Hootman.

15 Q. How does Hootman get along with Cimperman?

16 A. I don't think it was well, you know.

17 Q. Do you usually take information from a  
18 patrolman about his supervisor and then write  
19 that up as an investigation without contacting  
20 the supervisor?

21 A. This fit into my investigation that I was  
22 doing.

23 Q. Because this is the software necessary to  
24 modify a Motorola phone?

25 A. That's what I understood, yes.

1 Q. Okay. Now, do you know how many of these rib  
2 boxes Officer Cimperman was selling and how  
3 many he had?

4 A. I have no idea.

5 Q. Okay. Wouldn't that have been kind of  
6 important to know before you determined that  
7 he tried to sell the same thing on Ebay again?

8 A. This is information coming from this guy from  
9 Indiana.

10 Q. This guy who says he got his stuff now?

11 A. No, no, this is before he gets his stuff.

12 This complaint is coming that he bought the  
13 stuff on an Ebay auction type of deal, sends  
14 the money order to Mailboxes Unlimited, or  
15 whatever, and time elapses and he sees the  
16 same thing come back up.

17 Q. Okay.

18 A. And, there again, he doesn't know how many  
19 he's got. He just knows that he didn't get  
20 his.

21 Q. Right. Now, if you would have been presented  
22 with documentary evidence that showed that  
23 Officer Cimperman - I guess it was officer at  
24 that point - had mailed out the package  
25 containing what Mr. Ayers had bought prior to

1 Mr. Ayers ever calling the Department, would  
2 you have thrown out this allegation?

3 A. Yes, oh, yeah. I mean, like I say, it was  
4 it all fit my investigation, because --

5 Q. Right, because you thought that he was trying  
6 to ditch the evidence that he had done this?

7 A. It may have fit that the radios were  
8 reprogrammed, Dave Cimperman was in the link,  
9 the loop.

10 Q. Now, you know he is a ham radio guy, right?

11 A. I know he has a massive interest in radios.

12 Q. And he's got a bunch of buddies who are  
13 equally ham radio guys?

14 A. I would guess, yeah.

15 Q. Now, I earlier asked if you had been presented  
16 with evidence that he sent this item to Mr.  
17 Ayers and would that have been sufficient  
18 proof to throw out that claim and you said,  
19 yes.

20 MR. PIOTROWSKI: Now, we're at Union  
21 C or Union D?

22 (Union's Exhibit E was  
23 marked for identification.)

24 Q. You're allowed to look at it.

25 A. Okay. Thanks.

1 Q. Now, can you figure out what you're looking  
2 at?

3 A. A parcel shipping order.

4 Q. And that's from Mailboxes, Etc.?

5 A. Yeah, it's real light in the left-hand top  
6 corner there.

7 Q. Now, the customer is Dave Cimperman, right?

8 A. Yeah, customer, Dave Cimperman.

9 Q. And Package B is going to whom?

10 A. Betty Ayers.

11 Q. And that's 3409 Page Place Jeffersonville,  
12 Indiana. Does that coincide with the location  
13 of Mr. Ayers who called up complaining?

14 A. I was just told "Indiana."

15 Q. Okay. So this seems to be the package we're  
16 talking about here, right?

17 A. Yes.

18 Q. And do you see a date on this shipping order?

19 A. The date right beside Dave Cimperman's name is  
20 6/27/00.

21 Q. Okay. Now, to your knowledge, is that before  
22 Mr. Ayers ever called the Police Department?

23 A. Yes, I do believe --

24 Q. To your knowledge?

25 A. This radio -- like I say, the actual -- yeah,

1 to my knowledge, the actual doing this  
2 report --

3 Q. Was going back a ways?

4 A. Yeah, got pushed back because of some other  
5 stuff.

6 Q. Okay. Now, did you ever go and ask Dave  
7 Cimperman his side of the story with regard to  
8 the Ayers thing?

9 A. Nope. I think I explained that before.

10 Q. Right. Did you ever compare word-for-word the  
11 two Ebay postings regarding the rib box and  
12 software that Cimperman was selling?

13 A. No.

14 Q. So you didn't notice that they weren't  
15 actually identical?

16 A. I don't have -- I had absolutely nothing to do  
17 with that investigation, if there was an  
18 investigation.

19 Q. Okay. But it was mentioned in your  
20 investigation report, wasn't it?

21 A. Yeah, and for further information you need to  
22 see Hootman.

23 Q. Officer Hootman, the subordinate of Captain  
24 Cimperman?

25 A. At that point in time, yes.

1 Q. Okay. Now, when did you get the car radio in  
2 024 reprogrammed to kill the scanner function?

3 A. To the best of my knowledge, it hasn't been  
4 done yet.

5 Q. Okay. Once again, if they, in fact,  
6 constitute such a severe danger to the officer  
7 involved, why would you not change the radio?

8 A. No one knows it's in that car. The only  
9 person that -- you'd have to show them how to  
10 work that scan feature for them to know.  
11 There is a very limited amount of people in  
12 this Police Department that know that feature  
13 is in that radio to even try to attempt to  
14 turn it on.

15 Q. DiMatteo knows, right?

16 A. Yes.

17 Q. Who told him? Somebody had to hear it, right?

18 A. I don't know.

19 Q. Does he drive 024?

20 A. No, he drives the Captain's car.

21 Q. So if he drives the Captain's car and he  
22 doesn't drive 024, we have to assume that  
23 somebody who drives 024 came to him and  
24 said, "This radio is scanning. It's got this  
25 phone feature," right?

1       A.     It's either that or there's a remote  
2             possibility - and you'll have to talk to  
3             Captain DiMatteo - that he got picked up in  
4             that car and it did something to draw his  
5             attention to it and he found it himself, I  
6             don't know.

7       Q.     But if he got picked up in that car and it did  
8             something to call his attention to it,  
9             wouldn't the driver of the car also kind of  
10            notice that the radio is doing funny things?

11      A.     Unless it was already when the driver of the  
12             car was dropped off, you know, we pick up our  
13             reliefs.

14      Q.     But it's clear that that car still has that  
15             scanner function and that phone function?

16      A.     I don't have any knowledge of it ever being  
17             changed at this point. I believe it's the  
18             same.

19      Q.     Okay. Now, is it your understanding that  
20             modifying these Motorola radios is a violation  
21             in and of itself of the law?

22      A.     Okay. Explain yourself a little more, please.

23      Q.     If a regular citizen bought one of these and  
24             modified it, would that constitute any  
25             violation of the law?



1 A. I'd say, yes. I mean --

2 Q. Do you know which law?

3 A. There's a law. I quoted it in one of my --

4 Q. 2913.04 Unauthorized Use, computer hacking,  
5 telecommunication --

6 A. Yeah, and there's another one.

7 Q. But if the person owns that radio, they can't  
8 be committing unauthorized use of their own  
9 radio, can they?

10 A. Oh, they absolutely can.

11 Q. You can be committing an unauthorized use with  
12 your own radio? If I buy a radio, I'm allowed  
13 to do whatever I damn well please with it as  
14 long as it's not something fraudulent, right?

15 A. I really believe -- you're really stretching  
16 it.

17 Q. Now, are you aware that Motorola will sell the  
18 software and the cables to modify these to  
19 anybody?

20 A. No, I'm not aware. I don't know.

21 Q. Okay. Now, the scanning itself, there's  
22 nothing illegal about owning a scanner, is  
23 there?

24 A. I don't believe.

25 Q. And no matter how gussied up your scanner is,

1 even if it's contained in a portable radio and  
2 has all these other functions, as long as it's  
3 just scanning, there's nothing illegal about  
4 that, right?

5 A. A scanner and a transmitting radio to me are  
6 two different things.

7 Q. Right, but if you've got a transmitting radio  
8 that you're using only to scan, you don't have  
9 a violation, do you?

10 A. I have to leave that up to somebody else.

11 Q. Now, 024 was assigned to at least two other  
12 people other than Cimperman, right?

13 A. Yes, sir, three other people.

14 Q. Any chance that 024 was modified by somebody  
15 prior to Cimperman?

16 MR. PIOTROWSKI: Objection. We've  
17 already got Mr. Cimperman admitting that he  
18 did that. What are you belaboring this for?

19 MR. PIOTROWSKI: Well, I mean, the  
20 witch hunt concept that you've leaned on so  
21 heavily --

22 MR. TSCHOLL: Me?

23 MR. PIOTROWSKI: -- means that he's  
24 jumping to conclusions about Officer Cimperman  
25 that aren't justified by the evidence.

1                   One of the things not testified to by  
2                   the evidence here is that this car is not for  
3                   Mr. Cimperman's exclusive use. So when you  
4                   assume that there's three people that drive  
5                   the car on a daily basis and you assume that  
6                   Officer Cimperman is the one that did it, and  
7                   we're looking for a basis for that assumption.

8                   THE ARBITRATOR: Overruled.

9                   BY MR. PIOTROWSKI:

10          Q.       So is there some possibility other than  
11                   Cimperman modified it?

12          A.       Anything is possible.

13          Q.       And it could have been one of the other guys  
14                   on that shift? That drive that car, not on  
15                   that shift.

16          A.       Anything is possible.

17          Q.       Do you know if there are any companies other  
18                   than Motorola who sell the equipment necessary  
19                   to program portables?

20          A.       No, I have no idea.

21          Q.       And did you check with Kenny at Staley's to  
22                   see if this thing listed in the Ebay posting  
23                   would actually modify this portable?

24          A.       I did not myself.

25          Q.       Okay. Did you ever discover any evidence that

1 Captain Cimperman ever used the phone patch  
2 feature?

3 A. The only evidence that I would have pertaining  
4 to that would be through Officer Rocky  
5 Dusenberry of what he saw.

6 Q. His statement said that he found the phone  
7 call function himself?

8 A. Yeah, in his, yeah, portable.

9 Q. And he made one phone call for less than a  
10 minute?

11 A. Something along those lines. A short period  
12 of time.

13 Q. We have evidence that Rocky used that  
14 function, but is there any evidence that  
15 Captain Cimperman ever used it?

16 A. I would have to say, no, I mean --

17 Q. Do you know what kind of computer is required  
18 to modify one of these?

19 A. I can go with what Kenny told me and that's  
20 it.

21 Q. Did he tell you it would have to be a computer  
22 probably five generations old?

23 A. No, he referred to it as a laptop.

24 Q. There's five generation-old laptops, too, but  
25 they're not as cool looking.

1 A. That's the way he explained it to me,  
2 a "laptop."

3 Q. How many of your officers carry tape recorders  
4 on a regular basis? And you can answer "the  
5 most," "some," "half," "a third."

6 A. Okay. We have video recorder cameras in our  
7 cruisers that have a tape function.

8 Q. Okay.

9 A. If that's what you're referring to, all of  
10 them should have their mike and tape record  
11 capabilities. If you're talking about a  
12 pocket pal?

13 Q. Yeah, I'm talking about a little tape  
14 recorder.

15 A. How many have them that they use?

16 Q. Well, how many carry them, do you know?

17 A. Very few.

18 Q. There are some, but there's not that many?

19 A. Well, when they want a tape, they always seem  
20 to get mine, so --

21 Q. They come and get your tape recorder?

22 A. Yeah.

23 Q. Do you carry one regularly?

24 A. No.

25 Q. When Officer Dusenberry was in here he had a

1           little round dot on his shirt.

2       A.     That's what I was talking about.

3       Q.     That was a microphone?

4       A.     Yes.

5       Q.     For the dashtop cam?

6       A.     Yeah, the radio camcorder, yes, sir. We have  
7           a policy.

8       Q.     When you go up to a drunk driver, do you tell  
9           him you're recording him?

10      A.     No.

11      Q.     Do you ever tell anybody you're recording them  
12           on the dash cam?

13      A.     We have.

14      Q.     To calm them down?

15      A.     You know, you don't -- I mean, you can tell  
16           them you're recording them, but you mainly  
17           tell them you're videoing them and that covers  
18           the realm, but I would draw the line,  
19           you know.

20      Q.     To a small tape recorder?

21      A.     No.

22      Q.     You don't feel the need to tell a civilian  
23           certainly --

24      A.     No, I would draw the line of tape recording  
25           another police officer. I don't think that's

1           necessary, you know what I mean? Unless he's  
2           under a murder charge.

3       Q.     Okay. Now, as a result of the picture  
4           incident, you disciplined Officer Cimperman,  
5           right?

6       A.     No, I did not, no.

7                       MR. TSCHOLL:       Picture of  
8           Cimperman?

9       A.     I don't discipline anybody.

10      Q.     As a result of the picture incident, didn't  
11           you serve notice to Officer Cimperman that he  
12           was being investigated for misuse of property?

13      A.     There was write-ups that went to the Chief on  
14           everybody that was involved.

15      Q.     Including Officer Cimperman?

16      A.     Yeah.

17      Q.     What were his write-ups for?

18      A.     I'm thinking.

19      Q.     I don't think it's in there, but, you know.  
20           Oh, I thought you were pointing?

21      A.     No, I'm pointing to this. It should be in  
22           there. There was --

23      Q.     Chain of command issues?

24      A.     -- a big problem with the chain of command.

25      Q.     Because he did what?

1 A. Because he kept going over Captain DiMatteo's  
2 head.

3 Q. So he'd go to the Chief?

4 A. And I'm not for sure how far over the head he  
5 was going, but that was an issue that Captain  
6 DiMatteo said, you know.

7 Q. By complaining to the Chief, he should be  
8 disciplined for bumping the chain of command,  
9 skipping over the chain of command?

10 A. It's just a violation. I mean, you know, we  
11 have a chain of command.

12 Q. And you recommended discipline for that  
13 purpose?

14 A. I didn't recommend any discipline. I'm just  
15 handing this man --

16 Q. Evidence of violation?

17 A. Yes, of the possible violations. He can throw  
18 them away. He can burn them.

19 Q. So what you stated after --

20 A. It's all possible violations.

21 Q. So this was a violation for Officer Cimperman  
22 to go over the chain of command -- to complain  
23 about this incident, to skip the chain of  
24 command?

25 A. It was a possible violation --



1 Q. To talk to the Chief without going through  
2 DiMatteo?

3 A. Yeah, you know.

4 Q. What else did you discipline him for?

5 A. I didn't discipline him for anything.

6 Q. What else did you recommend discipline for?

7 A. I didn't recommend discipline for anything.

8 Q. What other violation did you come up with?

9 A. I think I wrote a thing with a possibility of  
10 violation on the radio deal. I don't  
11 remember. I don't remember.

12 MR. TSCHOLL: Show him the  
13 document, Mike, come on.

14 MR. PIOTROWSKI: I don't have the  
15 document, Andy.

16 THE WITNESS: Can I look through  
17 this?

18 MR. TSCHOLL: No, it's not in  
19 there.

20 Just give him the document.

21 MR. PIOTROWSKI: You want me to  
22 give --

23 THE ARBITRATOR: Whoa, hold it guys.  
24 Let's just do it by question and answer. All  
25 right?

1 BY MR. PIOTROWSKI:

2 Q. There was discipline was issued in May of that  
3 year as a result of an incident and I'm asking  
4 what it was for. Okay? Was it for having his  
5 picture on the Police Department computer?

6 A. There was -- during that investigation, it  
7 came up that there was, once again, somebody  
8 getting into the computers of the Police  
9 Department and coming up with these photos  
10 of -- you know, personal photos of Officer  
11 Cimperman and I might have wrote him up on  
12 that particular thing. I don't remember. I  
13 mean, I just don't remember, you know.  
14 It's -- he got a couple, you know --

15 Q. Dings?

16 A. Just notices that I was shipping it to the  
17 Chief. That's all it is, is a notice.

18 Q. Do you know if there is any --

19 A. I don't have any idea.

20 Q. -- resulting discipline?

21 A. I have no idea.

22 Q. At the conclusion of your investigation of the  
23 picture incident, did you decide that Officer  
24 Cimperman had reason to be annoyed and  
25 offended by the picture?

1 A. I can't speak whether he was annoyed.

2 Q. My question was whether he had reason -- was  
3 the picture offensive?

4 A. Could be. Could be.

5 Q. Okay. You stated earlier that somebody had  
6 told you a tape had surfaced of the  
7 conversation between you and Cimperman  
8 regarding the picture incident. Who told you  
9 it surfaced?

10 A. Safety Director.

11 Q. When?

12 A. What's today?

13 Q. Today's the 3rd.

14 A. Monday.

15 Q. Okay. And do you know where it surfaced from?

16 A. He asked me.

17 Q. How there could be a tape of this  
18 conversation?

19 A. He asked me where it came from. I didn't know  
20 it existed.

21 Q. Do you know if that conversation was on a  
22 taped police line?

23 A. I don't have any idea.

24 Q. Okay.

25 A. I don't know what tape you're talking about.

1 I don't know.

2 Q. Now, when you talked to Dave Cimperman, he  
3 made it clear to you that he didn't think you  
4 should be doing this investigation, right?

5 A. Yes.

6 Q. Did you contemplate asking the Chief to pull  
7 you off the investigation?

8 A. The very next day I went to the Chief, voiced  
9 my concerns, because he voiced his concerns.

10 Q. What did the Chief say?

11 A. "You're doing the investigation."

12 Q. What discipline was issued to Rocky Dusenberry  
13 for his involvement in the radio  
14 modifications?

15 A. I don't have any idea. This man -- I don't  
16 give out discipline. I'm not invited to the  
17 meetings, so I don't know.

18 Q. Did you have any involvement in the Lola  
19 Arrendondo investigation?

20 A. I learned of a Lola Arrendondo incident just  
21 this week. Not one bit of involvement  
22 whatsoever.

23 Q. Do you know who did handle that investigation?

24 A. No.

25 Q. Okay. Normally it would be who? Remember

1           this occurred in July, so he would have  
2           already been a Captain.

3       A.    It would be his superior, which would be the  
4           Chief, or if I had any suggestions or  
5           anything, I would give it to the detective,  
6           but I don't know who did it. I don't know,  
7           but normally it should have been done by the  
8           Chief.

9       Q.    Certainly not Patrolman Hootman?

10      A.    Don't know. I mean, if the Chief tells  
11           Patrolman Hootman to do it, Patrolman Hootman  
12           is going to do it. And that's entirely  
13           possible in any scenario there. I don't know.

14      Q.    At any time during any of these -- strike  
15           that.

16                   At any time during your investigation  
17           of the radio incident, or what little  
18           investigation you did on the Ebay incident,  
19           did you talk to Officer Captain Cimperman  
20           about this incident?

21      A.    The radio, no, no, no, no. Neither one. I  
22           didn't do any investigation on the other one.

23      Q.    You just repeated what you were told?

24      A.    All this is is a report to let the Chief see  
25           if he needed to go further with it. There's

1           no -- it's just presumption stuff, is all it  
2           is.

3       Q.     Okay.

4                       MR. PIOTROWSKI:   I have no further  
5           questions, thank you.

6                       THE ARBITRATOR:   Any Redirect?

7                       MR. TSCHOLL:       No redirect.

8                       THE ARBITRATOR:   Your next witness?  
9           Off the record.

10                      (Discussion held off record.)

11                      THE ARBITRATOR:   While we were off  
12           the record, the parties have examined their  
13           calendars and we are going to reconvene this  
14           proceeding on May 21st at 9 a.m.

15

16

17                      - - - - -  
                      (Proceedings adjourned at 5:54 p.m.)

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C E R T I F I C A T E

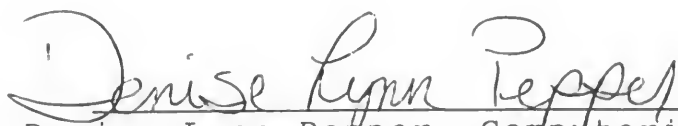
STATE OF OHIO,       )  
                              )       SS:  
STARK COUNTY,       )

I, Denise Lynn Pepper, a Computerized Stenotype Reporter and Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that these proceedings were taken by me and reduced to Stenotypy, afterwards prepared and produced by means of Computer-Aided Transcription and that the foregoing is a true and correct transcription of the proceedings so taken as aforesaid.

I do further certify that these proceedings were taken at the time and place in the foregoing caption specified.

I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the event of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Canton, Ohio on this 4th day of June, 2001.

  
Denise Lynn Pepper, Computerized  
Stenotype Reporter and Notary  
Public in and for the State of Ohio.

My commission expires November 29, 2005.  
- - - - -

[illegible]



## AMERICAN ARBITRATION ASSOCIATION

CASE NO: 010129-05322-6

- - - - -

THE CITY OF NEW PHILADELPHIA )

Employee, )

and )

ARBITRATOR:  
MR. MCINTOSH

FRATERNAL ORDER OF )

POLICE/OHIO LABOR COUNCIL, )

Employer. )

- - - - -

BE IT REMEMBERED, that upon the Arbitration of the above-entitled matter, held at the New Philadelphia Police Department, New Philadelphia, Ohio, before Mr. McIntosh, Arbitrator, and commencing on Thursday, the 21st day of May, 2001, at 9:00 a.m., at which time the following proceedings were had.

- - - - -

1           APPEARANCES:

2           On behalf of the City of New Philadelphia:

3                   ROBERT J. TSCHOLL, ATTORNEY AT LAW  
4                   740 UNITED BANK BUILDING  
5                   220 MARKET AVENUE SOUTH  
6                   CANTON, OHIO 44702-2181

7                   (330) 456-7702

8           On behalf of the Fraternal Order of  
9           Labor Council:

10                   MICHAEL PIOTROWSKI, ATTORNEY AT LAW  
11                   FRATERNAL ORDER OF POLICE NE OFFICE  
12                   2721 MANCHESTER ROAD  
13                   AKRON, OHIO 44319

14                   (330) 753-7080

15                   - - - - -

I N D E X

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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Chief Staggers	319	353	418	419
----------------	-----	-----	-----	-----

Gregory Popham	421	448		
----------------	-----	-----	--	--

Brett Belknap	472	476	482	
---------------	-----	-----	-----	--

Chad Rupp	484	487	491	
-----------	-----	-----	-----	--

David Cimperman			565	518
-----------------	--	--	-----	-----

Michelle Green	532	537		
----------------	-----	-----	--	--

<u>Witness</u>	<u>Further Examination</u>
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Chief Staggers	571
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David Cimperman	537, 565, 577
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<u>Exhibits</u>	<u>Page</u>
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City F Newspaper Article	440
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Union G Printout of web page	506
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City H Timesheets	532
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Union I Ebay page for sale	576
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Union J Auction item	579
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Joint A Admitted into evidence	472
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Joint B Admitted into evidence	472
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Joint D Admitted into evidence	472
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City C Admitted into evidence	472
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Union I Admitted into evidence	581
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Union J Admitted into evidence	581
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1                   CONTINUATION OF HEARING

2                   THE ARBITRATOR:               Will you swear  
3                   in the Chief, please?

4                   WHEREUPON,

5                   CHIEF THOMAS STAGGERS

6                   who, being first duly sworn, testified as  
7                   follows:

8                   MR. TSCHOLL:   Let me take a moment  
9                   here to catch up with today's --

10                  MR. PIOTROWSKI:   We separated  
11                  witnesses, didn't we?

12                  MR. TSCHOLL:       Yes.   He's our  
13                  representative.   The Chief is the witness.  
14                  He's going to be our representative.

15                  MR. PIOTROWSKI:   So we're swapping  
16                  representatives day to day?   Wasn't the Chief  
17                  the representative last week?

18                  MR. TSCHOLL:       He was, but now he's  
19                  the witness and Greg's our representative.

20                  MR. PIOTROWSKI:   Oh, okay, so under  
21                  that theory, I can bring in every witness to  
22                  watch the previous witness and just rotate  
23                  through 37 people.

24                  MR. TSCHOLL:       That's fine.

25                  THE ARBITRATOR:   If he's not going to

1           testify, then --

2                   MR. TSCHOLL:           No, he's going to  
3           testify.

4                           DIRECT EXAMINATION

5           BY MR. TSCHOLL:

6   Q.   Chief, would you state your position for the  
7       Arbitrator.

8   A.   Chief of Police for the City of New  
9       Philadelphia Police Department.

10  Q.   And how long have you been employed by the  
11       City of New Philadelphia Police Department?

12  A.   Approximately 27-and-a-half years.

13  Q.   And briefly give us a short biographical  
14       sketch of what you've done for the City of New  
15       Philadelphia Police Department.

16  A.   I was hired as patrolman in September of 1973,  
17       promoted to Captain in 1980, promoted to Chief  
18       in 1986, and I've been Chief of Police since  
19       then.

20  Q.   Will you please describe your duties briefly  
21       as the Chief of Police of the New Philadelphia  
22       Police Department.

23  A.   As Chief of Police I oversee the operations of  
24       the Department, budgeting, manpower,  
25       procurement of supplies, repair of all

1 equipment.

2 Q. Do you know the Grievant, Mr. Cimperman?

3 A. Yes, I do.

4 Q. And when did you first meet Mr. Cimperman?

5 A. Mr. Cimperman was hired as a Police Officer  
6 with the City, I believe, in 1994.

7 Q. And you met him at that time?

8 A. During the -- prior to that, during the  
9 initial phase of application interview part of  
10 his being sworn in, so it was in 1994.

11 Q. And, Chief, did you become involved in the  
12 events that led to Mr. Cimperman's termination  
13 from the City of New Philadelphia Police  
14 Department?

15 A. Yes, I did.

16 Q. And can you tell the Arbitrator how you became  
17 involved?

18 A. I was contacted by Captain Calderon in  
19 reference to the possibility of radios that  
20 had been reprogrammed or tampered with. I  
21 told him I wanted that investigated.

22 Mr. Cimperman, sometime in June of  
23 2000 I believe it was, was promoted to  
24 Captain. There were meetings with Mr.  
25 Cimperman on his -- as being a Captain due to

1 the fact that he was on probation.

2 Then I received information on, I  
3 guess, his involvement with a Lola Arrendondo  
4 and the fact that monies that was supposed to  
5 be paid to the City, were deposited into Mr.  
6 Cimperman's personal account.

7 This led to him being placed on a  
8 paid Administrative Leave. I believe it was  
9 August -- maybe July 4 -- August 4th - I would  
10 have to look at the correct date - of 2000  
11 pending an investigation of --

12 Q. Chief --

13 A. -- BCI.

14 Q. Okay. Chief let me -- thank you. Let me just  
15 continue by question and answers, if I may,  
16 please.

17 A. Yes.

18 Q. Would you turn to document number 19 in the  
19 packet of exhibits.

20 A. (Witness complies.)

21 Q. Are you there?

22 A. Yes.

23 Q. Can you identify this document?

24 A. It was a note that was left for me in my  
25 morning mail that I get for anything that

1 happens, notes or any mail that comes in.

2 Q. And since it's so brief, can you read that  
3 into the record, please?

4 A. All right. "Chief, North Carolina Electronics  
5 called 7/21/00 at 18:52 hours. Wanted to  
6 verify if Dave Cimperman was an officer with  
7 this department because he sent several radios  
8 to them to be reprogrammed. I" --

9 Q. Is there an abbreviation for "advised"?

10 A. Yes, "Advised him to call you 8/1/00. He  
11 thinks Dave is doing this through or for the  
12 City."

13 Q. And do you know when you received this, Chief?

14 A. I would have received it the next time  
15 after -- it would have been written when I  
16 pick up my mail. I would have to go back and  
17 look at the calendar.

18 Q. This says here that the call came on 7/31/00,  
19 would you have received it around that time?

20 A. Yes, unless that was a Friday, then I wouldn't  
21 have received it until the following Monday.

22 Q. Okay. And when you received this, did this  
23 concern you?

24 A. Yes, it did.

25 Q. And what was it about this note that concerned



1           you?

2       A.   Well, first of all, that Dave had any police  
3           radios. He has no authority to be programming  
4           any police radios unless approved by me.

5       Q.   Okay. Did you ever receive a call from North  
6           Carolina Electronics on August the 1st?

7       A.   No.

8       Q.   And do you know who left this note for you?

9       A.   I believe it's my dispatcher Teresa Everett.  
10           She's no longer with the Department. She's  
11           taken another position.

12      Q.   After this did you have a meeting with Mr.  
13           Cimperman?

14      A.   Yes, August 4th the Safety Director and I met  
15           with Dave Cimperman. We had concerns about  
16           the Arrendondo monies that were deposited.

17      Q.   Why don't you give us the background on those  
18           concerns?

19      A.   Well, this was a meeting where we brought him  
20           in. We felt that there was possible  
21           wrongdoing here and we were going to place him  
22           on paid Administrative Leave pending an  
23           independent investigation.

24      Q.   And how did it come to your attention that  
25           there could be a problem with the Arrendondo

1 matter?

2 A. I received information from, I believe it was  
3 Larry Hootman. He sent a report to me that,  
4 evidently, the Safety Director sent him to  
5 send to me and it showed Dave Cimperman  
6 received money from Arrendondo.

7 It was not deposited into the City  
8 until he was confronted substantially later by  
9 the Court Bailiff, Wendy Jones.

10 Q. Turn to documents 20 and 21 in the packet,  
11 would you, please, Chief?

12 A. Yes.

13 Q. Can you identify this document?

14 A. This is a letter from Larry Hootman to me  
15 about Dave Cimperman.

16 Q. And is this the letter where you found out  
17 about the Arrendondo matter?

18 A. Yes, it is.

19 Q. So then you met with Mr. Cimperman the same  
20 day?

21 A. Yes.

22 Q. And was anybody else present at that meeting  
23 besides you and Mr. Cimperman?

24 A. Yes, the Safety Director.

25 Q. And do you know what time you met?

1 A. The shift started at 2:00, so it was somewhere  
2 right at the beginning of the shift.

3 Q. When you say, "the shift started," Mr.  
4 Cimperman's --

5 A. Mr. Cimperman's shift starts at 2:00.

6 Q. So he was working afternoons?

7 A. Yes.

8 Q. And where did that meeting take place?

9 A. In my office.

10 Q. And to the best of your recollection, can you  
11 tell me what was said at that meeting?

12 A. At that meeting we expressed our concerns. We  
13 told Mr. Cimperman that he was going to be  
14 placed on --

15 Q. When you say "we," can you tell me who -- when  
16 you say "we," if you can identify who the  
17 speakers were, I think it would help us out  
18 here.

19 A. Myself and the Safety Director.

20 Q. Did you both speak?

21 A. At different times.

22 Q. Why don't you tell me what you said. Tell me  
23 what Mr. Popham said and then tell me what Mr.  
24 Cimperman said.

25 A. It was explained to Officer Cimperman that he

1           was being placed on paid Administrative Leave.

2       Q.    By whom?

3       A.    I believe that was by the Safety Director.

4       Q.    Okay.

5       A.    As best I can recollect.

6                       During this meeting, I also -- being  
7       aware of this note about North Carolina  
8       Electronics, I remember asking Dave Cimperman  
9       about -- that I had concerns about his  
10      Internet involvement and the possibility of  
11      his using his position as a Police Officer.

12     Q.    And continue.

13     A.    Mr. Cimperman emphatically denied ever using  
14      his position as a Police Officer with the New  
15      Philadelphia Police Department in any of his  
16      Internet radio transactions or any Internet  
17      transactions. That's the way I remember him  
18      speaking to me.

19     Q.    Did Mr. Cimperman tell you that he was taping  
20      this meeting?

21     A.    No, he did not.

22     Q.    Okay. Continue, Chief, what else can you  
23      recall was said either by any one of the  
24      individuals at this meeting?

25     A.    It was like I said, I don't know exactly how

1 the chronology of the meeting went. He was  
2 placed on paid Administrative Leave. He  
3 developed a confrontational attitude somewhat  
4 with myself and the Safety Director.

5 Q. At this meeting?

6 A. At this meeting. He laid down the card of an  
7 attorney and said if we had any further  
8 questions or whatever to contact his  
9 attorney. This attorney would be representing  
10 him.

11 Q. Anything else that you can recall about this  
12 meeting that you haven't already told us?

13 A. Other than, like I say, he was very emphatic  
14 that he hadn't used his position.

15 Q. Now, turn to Document 13, please.

16 A. (Witness complies.)

17 Q. Can you identify this document?

18 A. This is a letter from Captain -- or excuse  
19 me. Gregg Popham, the Safety Director, to  
20 Captain Dave Cimperman.

21 It places him on paid Administrative  
22 Leave and it also serves as notice of inquiry  
23 per the contract.

24 Q. So is this the written notice regarding the  
25 content of the meeting that you had at 2:00 on

1 August the 4th?

2 A. Yes.

3 Q. And I note here that you are one of the cc's?

4 A. Yes.

5 Q. Did you get a copy of this?

6 A. Yes.

7 Q. Now, can you tell me in the -- what was the  
8 next event pertaining to Mr. Cimperman that  
9 you were involved with subsequent to 8/4/00?

10 A. I was contacted by, I believe, Attorney Hinig  
11 wanting any statements of any charges or  
12 allegations made against officer Dave  
13 Cimperman and any documents relating to that.

14 I prepared these and submitted them  
15 to him.

16 Q. Who did the investigation of the Internet  
17 transactions in the Arrendondo matter?

18 A. The Bureau of Criminal Investigation.

19 Q. And why was it that they did the investigation  
20 as opposed to the New Philadelphia Police  
21 Department?

22 A. Well, again, it's probably best to have an  
23 independent agency. That way, you can show no  
24 favoritism to either side; administrative or  
25 to the officer.

1 Q. And were you involved with BCI in the request  
2 for them to do this investigation?

3 A. Yes, I had sent a letter to the  
4 Superintendent, I believe, of BCI requesting  
5 an independent investigation.

6 Q. And did they do an investigation?

7 A. Yes, they did.

8 Q. And as a result of that investigation, did you  
9 receive any information regarding the charges  
10 per the August 4, 2000 letter?

11 A. Yes.

12 Q. And what type of information did you receive?

13 A. There was an Email from Dave Cimperman to  
14 Brinkley Electronics.

15 Q. Just in general, would you tell me what you  
16 received.

17 A. It was various documents from BCI and Emails  
18 and so forth and just an overview of their  
19 initial investigation.

20 Q. This is on his Internet transactions; is that  
21 correct?

22 A. Internet transactions and the Arrendondo  
23 matter.

24 Q. You also received information regarding the  
25 Arrendondo matter?

1 A. Yes.

2 Q. And it was accumulated by BCI?

3 A. Yes.

4 Q. And let's go through the list of documents.  
5 Turn to Document 1, please.

6 A. (Witness complies.)

7 Q. Can you identify this document?

8 A. It appears to be a letter sent to Brinkley  
9 Electronics and it's dated 2/27/00 signed by  
10 Dave S. Cimperman Junior, Captain New  
11 Philadelphia Police Department.

12 Q. And how did you get this document?

13 A. Through BCI.

14 Q. Through their investigation?

15 A. Yes.

16 Q. Now, go to the last two sentences of this  
17 document. It says here -- can you read that  
18 into the record? Just the last -- well, yeah,  
19 the second to last sentence.

20 A. "My work schedule is 2:00 p.m. --"

21 Q. The second to last sentence, Chief.

22 A. "I'm in a hurry to get the radios. I need to  
23 get them installed in our cruisers ASAP."

24 Q. Did you know anything about getting radios  
25 installed into your cruisers?



1 A. No.

2 Q. And how is this letter signed by Mr.  
3 Cimperman?

4 A. David F. Cimperman Junior, Captain New  
5 Philadelphia Police.

6 Q. The telephone numbers -- there's a series of  
7 telephone numbers, do you see that?

8 A. Yes.

9 Q. And there's a telephone number that,  
10 apparently, on this Email, is described as the  
11 Police Department telephone number. Do you  
12 see that "330-343-4488"?

13 A. Yes.

14 Q. And do you recognize that number?

15 A. Yes.

16 Q. What is that number?

17 A. That's the primary phone line that comes into  
18 the Police Department.

19 Q. Of New Philadelphia?

20 A. Yes.

21 Q. Item Number 2, can you identify this document?

22 A. It is a list of radio -- appears to be radio  
23 frequencies.

24 Q. Where did you get this document?

25 A. I believe this came from BCI also.

1 Q. Do you know whose handwriting this is?

2 A. No, sir.

3 Q. Up there it says, "155.73." What is that?

4 A. That is the frequency of a radio system that  
5 used to be in use by the Police Department.

6 Q. Used to be in use?

7 A. Yes.

8 Q. It's no longer in use?

9 A. No.

10 Q. What about these other radio frequencies, do  
11 you know what they are?

12 A. They appear to be radio frequencies of various  
13 departments or agencies within the State of  
14 Ohio. Intercity is a statewide band.

15 The 115.16 is something where Union  
16 Hospital -- it says, "Union Hospital." I have  
17 no idea what that is. The other is the  
18 Village of Newcomerstown.

19 Q. You don't have to go through them all. Do you  
20 recognize some of these or all of these radio  
21 frequencies?

22 A. I recognize that they are radio frequencies.  
23 The one that I specifically recognize is the  
24 155.73.

25 Q. Document Number 3, can you identify this

1 document?

2 A. It appears to be a program list. It has  
3 transmission frequencies and receiving  
4 frequencies for various channels.

5 Q. Now, are any of these City of New Philadelphia  
6 Police frequencies?

7 A. Channel 8 is a 155.73, which is the old New  
8 Philadelphia Police frequencies.

9 Q. Where did you get this document?

10 A. This came from BCI also.

11 Q. And page 4, would your testimony be the  
12 same --

13 A. Yes.

14 Q. -- as you described on page 3?

15 A. Yes.

16 Q. Page 5, can you identify this document?

17 A. It appears to be an Email from David F.  
18 Cimperman Junior to Brinkley Electronics.

19 Q. Where did you get this document?

20 A. BCI.

21 Q. And what's a Maxon SM-4150?

22 A. I can't tell you what it is. I assume it's a  
23 radio. I don't know. I know Maxon makes  
24 radios, but I don't know what that model  
25 number is.

1 Q. Document Number 6, what is this document?

2 A. Again, this appears to be an Email. It is  
3 from Andy Brinkley, Brinkley Electronics, to  
4 David F. Cimperman.

5 Q. Incidentally, did you come to find out who  
6 this Andy Brinkley is?

7 A. Through BCI --

8 MR. PIOTROWSKI: I'm going to  
9 object. We are well into hearsay testimony  
10 here. I've let it go in the interest of  
11 speed, but now we're talking about BCI telling  
12 him that this Andy Brinkley is somebody and he  
13 doesn't have any personal knowledge himself it  
14 seems. It's double hearsay at least and  
15 that's only if the person at BCI is actually  
16 the person that talked to Andy Brinkley.

17 MR. TSCHOLL: Well, my response,  
18 number one, is: Hearsay is generally admitted  
19 into these types of hearings. We don't have a  
20 jury here. We've got a Judge -- an  
21 Arbitrator, same difference, and you are in a  
22 position -- hearsay is only not admis -- well,  
23 for a lot of reasons hearsay is not  
24 admissable, but I think you're the best one to  
25 judge the quality and the accuracy. And if

1       you choose to ignore it, that's your  
2       preference. But hearsay, at least as long as  
3       I have been doing these types of things, has  
4       always been admitted. And we sure as heck  
5       aren't going to ask Andy Brinkley to come into  
6       this hearing.

7               MR. PIOTROWSKI: And that denies me  
8       the opportunity to cross-examine Andy  
9       Brinkley, as well as the guy from BCI. And I  
10      can't even effectively try to cross-examine  
11      the Chief on it.

12             THE ARBITRATOR: I'm one of the  
13      Arbitrators that probably requires a greater  
14      adherence to the Rules of Evidence and I do  
15      not permit hearsay for what it's worth,  
16      because any evidence that comes in has to be  
17      worth something.

18             This document, however, does describe  
19      Andy Brinkley at Brinkley Electronics. To the  
20      extent that the Chief can verify his  
21      relationship with that organization, I will  
22      permit him to do so, but if he only learned of  
23      that information from BCI, I would sustain the  
24      objection.

25             THE WITNESS:        Again --

1 THE ARBITRATOR: Other than from BCI,  
2 are you aware of who this Brinkley individual  
3 is?

4 THE WITNESS: No, sir.

5 THE ARBITRATOR: All right.  
6 Sustained.

7 MR. TSCHOLL: Well, okay. Then  
8 we're going to get somebody from BCI in here.  
9 So can you go tell -- you know, I mean, this  
10 is just a waste of time, but we'll go ahead  
11 and do it.

12 MR. PIOTROWSKI: Well, don't throw a  
13 tiff. What's the value of knowing who Andy  
14 Brinkley is?

15 MR. TSCHOLL: Can I get Mr.  
16 Cimperman back on to ask him whether or not  
17 these --

18 THE ARBITRATOR: Yes.

19 MR. TSCHOLL: I can do that?

20 THE ARBITRATOR: Yes.

21 BY MR. TSCHOLL:

22 Q. Okay. I'm just going to go through these  
23 quickly then and ask you how you received  
24 these documents since you're not permitted to  
25 testify as to --

1 THE ARBITRATOR: That's not quite  
2 correct. He's permitted to testify with  
3 respect to these documents. There may be some  
4 specific objections with respect to  
5 information contained therein and I will rule  
6 at the appropriate time and with the  
7 appropriate objection.

8 MR. TSCHOLL: Okay. Thank you.

9 BY MR. TSCHOLL:

10 Q. Document Number 7, can you identify this  
11 document?

12 A. Again, it's a document that I received from  
13 BCI.

14 Q. And in this document does Mr. Cimperman  
15 identify himself in any manner as associated  
16 with the New Philadelphia Police Department?

17 A. Yes.

18 Q. And where is that? Can you point that out to  
19 the Arbitrator?

20 A. It's at the end of the major paragraph. It  
21 says, "Thank you in advance, David F.  
22 Cimperman Junior, Captain New Philadelphia  
23 Police Department." It has the departmental  
24 phone number and his schedule to work.

25 Q. In the body of this document, Chief, the last

1           two sentences, can you read those into the  
2           record?

3       A.     "I am in a hurry to get the radios. Two of  
4           them need to be installed ASAP in two unmarked  
5           cars. We are planning on using them in the  
6           next week or so. If there is any problem, you  
7           can contact me any time of the day or night."

8       Q.     How many unmarked cars does the City of New  
9           Philadelphia have?

10      A.     Three.

11      Q.     Had you ever authorized Mr. Cimperman to  
12           switch the radios in any of the unmarked cars?

13      A.     No.

14      Q.     Going back up, do you know what a VHFSM-4150  
15           mobile radio is?

16      A.     Not really.

17      Q.     Number 8. Please identify this document.

18      A.     It's a document I received from BCI.

19      Q.     And in this document is there any reference to  
20           Mr. Cimperman as an employee of the New  
21           Philadelphia Police Department?

22      A.     Yes.

23      Q.     Can you point that out to the Arbitrator?

24      A.     I believe it's the last sentence -- next to  
25           the last sentence of the document. It



1           says, "Thank you in advance, David F.  
2           Cimperman Junior, New Philadelphia Police  
3           Department."

4                   MR. PIOTROWSKI: I'm going to  
5           object. He's pointing out the copy of the  
6           previous document that's on the return Email.  
7           This isn't two instances. This is one  
8           instance where the return Email comes back to  
9           him and it contains the text of the Email  
10          which is being replied from.

11                   MR. TSCHOLL:        Oh.

12                   MR. PIOTROWSKI: So, "Thanks for the  
13          business, I'll be looking for them," and then  
14          the rest is just --

15                   MR. TSCHOLL:        Okay. It is. So  
16          we'll move on, because it's exactly the same.  
17          That's correct. It's just written in a  
18          different format.

19          BY MR. TSCHOLL:

20          Q.     What about 9, Chief?

21          A.     Again, it's a document received from BCI.

22          Q.     Ten?

23          A.     Again, from BCI.

24          Q.     And this document indicates on this document  
25          that whoever did this, "Verify employment with

1 NPPD." Do you see that?

2 A. Yes.

3 Q. Did you ever talk to anybody from Brinkley  
4 Electronics about Mr. Cimperman?

5 A. No.

6 Q. Do you know what "NPPD" stands for?

7 A. New Philadelphia Police Department.

8 Q. Eleven, identify this document.

9 A. Again, it's a document that I received from  
10 BCI.

11 Q. Twelve?

12 A. Same thing.

13 Q. We're next going to turn to the series of  
14 documents pertaining to Arrendondo. Starting  
15 on page 29, can you identify this document?

16 A. It's a criminal case information hard copy.

17 Q. Where did you receive this document? How did  
18 you receive this document?

19 A. I believe it was part of the copy that was put  
20 into BCI.

21 Q. Thirty?

22 A. Criminal case receipt screen, BCI.

23 Q. Thirty-one?

24 A. New Philadelphia Municipal Court entry on Lola  
25 Arrendondo and, again, BCI.

1 Q. Thirty-two?

2 A. Thirty-two is a thing from Municipal Court on  
3 Lola Arrendondo and that, too, would have been  
4 from BCI.

5 Q. Thirty-three?

6 A. That's the second part of page 32.

7 Q. Thirty-four?

8 A. Again, this is a thing from BCI. It was a  
9 Muni Court agreement statement.

10 Q. Thirty-five?

11 A. Docket entry listing from Muni Court and this  
12 was from BCI.

13 Q. Thirty-six and 37?

14 A. Statement from Wendy Jones.

15 Q. And I believe you earlier testified you had  
16 conversation with an Attorney Hinig?

17 A. Yes.

18 Q. And how is it that you -- pertaining to Mr.  
19 Cimperman, how is it that you had a  
20 conversation with Attorney Hinig?

21 A. Evidentially he was retained to represent Mr.  
22 Cimperman.

23 Q. And this contact with Mr. Hinig, was it in  
24 person or was it over the phone?

25 A. He requested the statement of charges against

1           Officer Cimperman and any documents pertaining  
2           to these. I prepared this and handed it to  
3           Attorney Hinig.

4       Q.    How was it that you happened to communicate  
5           with Mr. Hinig?

6       A.    I believe it was a phone call from you that he  
7           had been in contact with you.

8       Q.    And did you then call Attorney Hinig?

9       A.    Yes, I did.

10      Q.    And what did he tell you?

11      A.    That he wanted a statement of --

12      Q.    Did he tell you that he was representing Mr.  
13           Cimperman?

14      A.    I believe he did say that in those terms, yes.

15      Q.    What else did he tell you in this  
16           conversation?

17      A.    That he wanted a statement of all charges and  
18           documents related thereto.

19      Q.    And did you give him such a statement?

20      A.    Yes, I did.

21      Q.    And can you identify Documents 38 and 39,  
22           please?

23      A.    Thirty-eight is a document from me. It's a  
24           two-page document to Attorney Richard Hinig.  
25           It's a predeprivation hearing for charges

1           against Captain David Cimperman.

2       Q.    Do you recall when you wrote this document,  
3           Chief?

4       A.    I believe this was sent to him  
5           approximately -- I want to say late part of  
6           August, 28th maybe 29th, prior to the  
7           predeprivation hearing.

8       Q.    And what's contained in this document?

9       A.    It's a statement to Attorney Hinig explaining  
10          what the charges were.

11      Q.    Can you summarize those charges?

12      A.    Yes, it was untruthfulness, dishonesty and the  
13          possible offense of a criminal violation.

14      Q.    And what was the criminal violation that you  
15          had referenced there?

16      A.    The creation of a phone line, which is not  
17          taped, could possibly be construed as maybe a  
18          theft of service.

19      Q.    And you also talk about the reprogramming of  
20          the police portable radio?

21      A.    Yes.

22      Q.    And what was your concern there?

23      A.    It created a serious charge. It's tampering  
24          with City equipment. It's a misuse of Police  
25          equipment. The man had no authority by me to

1 change anything in the radios of the New  
2 Philadelphia Police Department.

3 Q. Two turn to the second page. Do you see that,  
4 Chief?

5 A. Yes.

6 Q. And you had set up the  
7 predisciplinary/predeprivation hearing?

8 A. Yes, scheduled for 2 p.m. on Tuesday,  
9 August 31st.

10 Q. And in the next to the last paragraph you  
11 indicate that you sent Mr. Hinig some  
12 documents, do you recall that?

13 A. Yes.

14 Q. Do you recall what documents you would have  
15 sent to him?

16 A. I believe it was statements from Larry Hootman  
17 about the improper -- and Richard Calderon,  
18 about the improper programming of the radios  
19 and I evidentially have a statement from Wendy  
20 Jones that I included, also, that concerns the  
21 Arrendondo matter.

22 Q. And the statement from Captain Calderon, would  
23 you turn to 15 and 16.

24 A. (Witness complies.)

25 Q. Is this the document that you would have sent

1 to Mr. Hinig?

2 A. Yes.

3 Q. Along with 20 and 21?

4 A. Yes.

5 Q. And, also, you said you would have sent the  
6 Wendy Jones's statement, too?

7 A. Yes.

8 Q. And just for the record then, that Wendy  
9 Jones's statement is --

10 THE ARBITRATOR: Thirty-six.

11 Q. Thirty-six and 37?

12 A. Yes.

13 Q. Any other documents that you sent to Mr. Hinig  
14 other than the ones you've testified to that  
15 you can recall?

16 A. The cover letter showing the date of the  
17 predeprivation hearing and charges. There may  
18 have been something else included. I just  
19 can't actually remember.

20 Q. Okay. Did you attend the predeprivation  
21 hearing?

22 A. Yes, I did.

23 Q. And when did that take place?

24 A. I believe it was August 31st.

25 Q. Do you recall who was present at that hearing?

1 A. Yes, Attorney Hinig, I believe it was Chuck  
2 Wilson, an FOP Representative, Dave Cimperman,  
3 myself, Safety Director Popham, and yourself  
4 and Attorney Hinig. Might have been somebody  
5 else, but off the top of my head, I can't come  
6 up with the other person if there was another  
7 person.

8 Q. Why don't you tell me what you can recall  
9 happening during that meeting.

10 A. Basically at that meeting we reiterated the  
11 statements here; two of the charges. Officer  
12 Cimperman was allowed to make a statement. He  
13 declined to do so. Based on that, I made a  
14 recommendation to the Safety Director.

15 Q. And what was your recommendation to the Safety  
16 Director?

17 A. Termination.

18 Q. And why did you recommend to the Safety  
19 Director that Mr. Cimperman be terminated?

20 A. I can't trust the man any longer. I feel that  
21 the man lied to me in the initial meeting of  
22 August 4th about his Internet involvement.  
23 There's a great safety issue in tampering with  
24 these radios. He had no authority to do so.

25 Again, I can't trust him that way.



1 I'm sorry, but if I can't trust him, I don't  
2 need him on my Department.

3 Q. Do you have rules and regulations that speak  
4 to or address either being untruthful, lying  
5 or tampering with City equipment?

6 A. Yes, we do.

7 Q. Will you turn to Document 25, please? Are you  
8 there, Chief?

9 A. Yes.

10 Q. Can you identify this document?

11 A. It's a page out of our Standards of Conduct  
12 manual.

13 Q. And how does this apply to the Cimperman  
14 matter or does this apply to the Cimperman  
15 matter?

16 A. Yes, it does.

17 Q. And how does it apply to the Cimperman matter?

18 A. It's titled 21, "The Use and Care of Property  
19 and Equipment," and it puts a direct  
20 enforcement action upon members of the  
21 Department to use and care for any equipment  
22 assigned to them.

23 Q. And how do the facts of this situation impact  
24 on this rule?

25 A. Well, he had no authority to tamper with or

1 change any of the City equipment that was  
2 issued to him. And one of the enforcement  
3 guidelines of that is termination if it  
4 creates a substantial safety risk.

5 Q. Now, you heard Captain Calderon's testimony  
6 regarding the substantial safety risk. Do you  
7 agree with Captain Calderon?

8 A. Yes, I do.

9 Q. Is there anything you care to add to Captain  
10 Calderon's testimony?

11 A. Well, again, it disturbs me that I would have  
12 an Officer in this Department do something  
13 without prior approval that would impact on  
14 fellow members of the Department, especially  
15 where -- I mean, nobody wants to get hurt in  
16 this business. It can be a dangerous job and  
17 like I say, at the end of the day everybody  
18 wants to go home safe and sound.

19 Q. Turn to the next page, please.

20 A. (Witness complies.)

21 Q. Can you identify this document?

22 A. Again, it's a page from our Standards of  
23 Conduct.

24 Q. And how is this relevant to the Cimperman  
25 matter?

1 A. Again, it's titled 11, "Dishonesty or  
2 truthfulness, members shall not lie or give  
3 misleading information." Basically, it deals  
4 with untruthfulness and law enforcement  
5 guidelines, termination.

6 Q. And what facts in this case supported your  
7 position that Mr. Cimperman was untruthful?

8 A. Several. One, as I look at the Arrendondo  
9 matter, the man was contacted by Arrendondo,  
10 put no money in the account until he was  
11 contacted by the Bailiff, at which time he  
12 then made the restitution to the City.

I feel he lied to me in the meeting  
14 in August 4th with myself and the Safety  
15 Director on his Internet transactions. I  
16 can't trust the man any longer.

17 Q. What is it that he said to you at the  
18 August 4th meeting that has lead you to  
19 believe that he has lied to you?

20 A. He was very emphatic about the fact that he  
21 had not used his position as a Police Officer  
22 in the Department on any of his Internet --  
23 and I'm not sure if the word was "radio"  
24 or "transaction," but it led me to believe  
transactions.

1 Q. Twenty-seven is the next page, Chief, can you  
2 identify this?

3 A. Again, it's a page from our Standards of  
4 Conduct.

5 Q. And what in here applies to the Cimperman  
6 case?

7 A. Again, the untruthfulness, giving misleading  
8 or untruthful statements, partial truths  
9 during a legal proceeding.

10 Q. Anything else you want to point out in this to  
11 the Arbitrator?

12 A. Again, I believe that it relates back to the  
13 others. And this, in and of itself, would be  
14 a termination offense, also.

15 Q. And 28?

16 A. Observance of criminal and civil laws. It's a  
17 page from our Standards of Conduct.

18 Q. And why is this in the Cimperman documents?

19 A. Again, there was a possibility that there was  
20 a criminal violation here in the programming  
21 of the radio that created a cell phone  
22 feature, which could be construed possibly of  
23 a theft of service.

24 Q. Turn to page 41. Can you identify this  
25 document?

1 A. That's a picture of David Cimperman.

2 Q. Do you know when did you first --

3 THE ARBITRATOR: What page?

4 Q. Forty-one.

5 THE ARBITRATOR: Go ahead.

6 Q. Can you identify the attire that Mr. Cimperman  
7 appears in?

8 A. It's a Police Officer hat, shirt with Captain  
9 badge and breast badge and I believe he has  
10 the NPPD logo on his shirt collar.

11 Q. And there's a series of pictures here. Can  
12 you identify those pictures going 41 through  
13 51, 52, 54?

14 A. Forty-one is Dave Cimperman's picture.  
15 Forty-two through 54 appears to be certain  
16 types of radio equipment or radios.

17 Q. And is this radio equipment that is used by  
18 the New Philadelphia Police Department; do you  
19 know? It doesn't appear to be ours.

20 A. No.

21 MR. PIOTROWSKI: Wait a minute.

22 (Interruption of proceedings.)

23 Q. Anything else, Chief, that you care to add  
24 regarding your recommendation to the Safety  
25 Director to terminate Mr. Cimperman that you

1 haven't already told us about?

2 A. I can't -- at the predeprivation hearing no  
3 defense was offered. I had to make my  
4 decision on what I had in front of me and  
5 that's what I did.

6 MR. TSCHOLL: I have no further  
7 questions.

8 THE ARBITRATOR: Cross?

9 CROSS-EXAMINATION

10 BY MR. PIOTROWSKI:

11 Q. Chief, are there items that are only available  
12 to police officers for sale?

13 A. I believe so.

14 Q. Can you describe any of them?

15 A. Certain types of hand guns, ammunition,  
16 probably certain specific types of chemical  
17 ammunition. I mean, something that would be  
18 specific to --

19 Q. To law enforcement?

20 A. Yes.

21 Q. Is there another category of items that some  
22 dealers will only sell to police officers?

23 A. I believe so, yes.

24 Q. Such items as expanding batons that are not  
25 illegal to sell to anybody else, but some

1           retailers will only sell them only to the  
2           police?

3       A.    I think that's a retailer's decision that he  
4           would make.

5       Q.    Right.  It's not illegal for him to sell, say,  
6           an expanding baton to a civilian?

7       A.    No.

8       Q.    Is it wrong for your officers to identify  
9           themselves as New Philadelphia Police Officers  
10          in order to purchase these items?

11      A.    Only with my authority.

12      Q.    So if an officer is at a gun show and wants to  
13          pick up a personal weapon that's available  
14          only to police officers, he has to ask you  
15          first?

16      A.    He has to have a letter signed by me to buy  
17          it.

18      Q.    What if that's not what's required by the  
19          retailer, Chief?

20                   MR. TSCHOLL:        Objection to the  
21          question.  I mean --

22                   THE ARBITRATOR:    This is  
23          cross-examination.  I'll permit it.  
24          Overruled.

25      A.    My officers have come to me with requests to

1           buy weapons. I have signed these requests.

2                     Dave Cimperman himself has come to me  
3 with requests to purchase weapons that I have  
4 signed. This is evidentially in regards to  
5 the Brady Bill or high capacity magazines for  
6 semiautomatic weapons.

7       Q.   What about ammunition, do they have to get  
8 your permission before buying ammunition?

9       A.   No, the Department issues that.

10      Q.   There's nothing here that says officers can't  
11 practice on their own, is there?

12      A.   No.

13      Q.   So if they wanted to buy ammunition to  
14 practice on their own and they wanted  
15 police-only ammunition, they could buy it at  
16 the dealer?

17      A.   If the dealer would sell it to them.

18      Q.   And if he said, "Are you a police officer?"

19           And he said, "Yes, I am, in fact, a police  
20 officer," would they be violating your policy?

21      A.   No.

22      Q.   Okay. On the 4th of August of 2000, you asked  
23 a question of Dave Cimperman that his answer  
24 resulted in charges against him. Can you  
25 remember the exact words of your question?



1 A. I remember that I had concerns about his  
2 Internet transactions. I don't remember my  
3 exact terminology. It had something to do  
4 with his position within the Police  
5 Department.

6 Q. It had something to do with his position  
7 within the Police Department?

8 A. I can't remember my exact terminology.

9 Q. Now, if you flip to page 13, the last sentence  
10 of the first paragraph, "Also, transactions  
11 involving Internet sale of radio equipment  
12 will be looked at."

13 This is the document that you handed  
14 to Dave Cimperman immediately before asking  
15 him that question, right?

16 A. I don't know when it was handed to him. I  
17 can't tell you. This is not my signature.

18 Q. Okay. This meeting on 8/4/00 occurred so that  
19 you could inform Dave Cimperman that he was  
20 going on paid Administrative Leave and to give  
21 him this letter, right?

22 A. Yes, this was given to him on August 4th.

23 Q. Did you give it to him?

24 A. I'm not sure if I handed it to him or the  
25 Safety Director handed it to him.

1 Q. Did you then ask him about his transactions  
2 involving Internet sale of radio equipment?

3 A. He was asked in that meeting. And I believe  
4 this would have been typed after, but I can't  
5 tell you that exactly.

6 Q. This would have been typed after?

7 A. Yes.

8 Q. So after you asked him the question about  
9 Internet transactions, radio equipment sales,  
10 whatever, some of these words were in there,  
11 right?

12 A. Yes.

13 Q. And after you asked that question, somebody  
14 went and typed up this letter?

15 A. Yes.

16 Q. Okay. Who typed it up?

17 A. I may have. Like I say, I don't really  
18 remember. I could have typed it up for the  
19 Safety Director.

20 Q. Because it's dated August 4, 2000, the day of  
21 the meeting, that would have been when it was  
22 prepared, right?

23 A. Yes.

24 Q. So if on 8/4 you were typing, "Also,  
25 transactions involving Internet sale of radio

1 equipment," is it reasonable to believe that  
2 that's the question that you asked Dave  
3 Cimperman?

4 A. Yes.

5 Q. That you asked him about the Internet sale of  
6 radio equipment?

7 A. Yes.

8 Q. Do you know if Dave Cimperman ever sold Maxon  
9 SM-4150s to anybody?

10 A. No.

11 Q. Did you ever ask him that question?

12 A. No.

13 Q. Why not?

14 A. I didn't have all that information in front of  
15 me at that time.

16 Q. Okay. But you had made the decision to put  
17 him on paid Administrative Leave, give him a  
18 free vacation basically?

19 A. The decision to put him on paid Administrative  
20 Leave was because of his dealings in the  
21 Arrendondo matter and also we had concerns  
22 based upon the note that I had received from  
23 Brinkley Electronics, but I had no contact  
24 with this man. But I had some -- I mean,  
25 alarm bells went off.

1 Q. Well, Chief, what about the sale of the rib  
2 box over Ebay, wasn't that an issue on 8/4/00?

3 A. It could have been.

4 Q. Okay. So when you you referred to  
5 transactions involving Internet sale of radio  
6 equipment, were you referring to the rib box  
7 sales on Ebay?

8 A. I'm referring to his transactions. It could  
9 have been the rib box and it may have also  
10 been the note that I received about Brinkley  
11 Electronics. But alarm bells went off.

12 Q. It could have been either?

13 A. It could have been both.

14 Q. When did you notify him about the Brinkley  
15 investigation?

16 A. That was after this.

17 Q. This?

18 A. Yes, I didn't receive that information from  
19 BCI until after this.

20 Q. Okay. But you just told me, Chief, that on  
21 8/4/00 you asked him a question referring to  
22 the Brinkley --

23 A. 7/31, I received a note. The note was written  
24 that Brinkley had called the Police  
25 Department.

1 Q. So on 7/31 you began an investigation?

2 A. No, I had received information 7/31, or  
3 shortly thereafter, that Brinkley Electronics  
4 had inquired to the Police Department if this  
5 man was a valid member of the Police  
6 Department and they were told to contact me  
7 later.

8 Q. Did they ever do so?

9 A. No.

10 Q. Okay. Now, was it your understanding that he  
11 had to be a Police Officer to get these  
12 SM-4150s reprogrammed?

13 A. That he to be a Police Officer?

14 Q. Yeah.

15 A. I don't know about the SM-4150s.

16 Q. But that's the only thing Brinkley Electronics  
17 touched, right?

18 A. What I know is that if you want certain police  
19 frequencies in radios that will transmit off  
20 of that police frequency, you have to be  
21 associated with a police agency.

22 Q. Associated with a police agency?

23 A. Yes.

24 Q. Okay. They called the station. They were  
25 told to call back and talk to you?

1 A. Yes.

2 Q. And they never did so?

3 A. No.

4 Q. So is that a massive failure on the part of  
5 Brinkley Electronics with regard to the proper  
6 protocol for providing police radios?

7 A. Brinkley Electronics is located in North  
8 Carolina. I don't know what the protocol is  
9 in North Carolina.

10 Q. Did you begin an investigation as to Brinkley  
11 Electronics culpability in this matter?

12 A. That note when I received it - and I had BCI  
13 do this investigation - it was given to BCI  
14 and they entered it in and did their  
15 investigation.

16 Q. Now, you already testified that you don't know  
17 whether or not Dave Cimperman ever sold any  
18 SM-4150s, right?

19 A. I can't tell you that.

20 Q. Do you know what an SM-4150 looks like?

21 A. All I know is it's a Maxon radio, based on the  
22 information that I have here.

23 Q. Okay. Do you know where they are now?

24 A. What? An SM-4150?

25 Q. Where these SM-4150s are?

1 A. No.

2 Q. If it was a transaction involving the Internet  
3 sale of radio equipment that involved these  
4 SM-4150s, wouldn't they have to be sold on the  
5 Internet?

6 A. Not necessarily sold. If he's -- I believe  
7 that Internet was dealing with -- or the  
8 Internet -- Emails we have here was dealing  
9 with him wanting something reprogrammed, not  
10 sold. He wanted the radio reprogrammed with  
11 certain frequencies.

12 Q. But, Chief, you wrote, "Also transactions  
13 involving Internet sale of radio equipment  
14 will be looked at."

15 A. And that could have been the rib box. Like I  
16 say, all this was transpiring, so --

17 Q. Okay. At any point during this time you could  
18 have ordered Captain Cimperman to answer your  
19 questions, couldn't you?

20 A. At that time and in that meeting, Captain  
21 Cimperman took an attitude, laid down a card  
22 from an attorney and says if we have any  
23 further comments or questions to contact his  
24 attorney.

25 Q. Okay.

1       A.     That's when it was ceased.   He was placed on  
2             Administrative Leave and we took our  
3             investigative action with BCI.

4       Q.     Are you familiar with your Collective  
5             Bargaining Agreement, Chief?

6       A.     Somewhat.   I don't have it memorized.

7       Q.     Does it allow you to order people to answer  
8             questions?

9       A.     I believe it does.

10      Q.     So whether or not he slapped down a lawyer's  
11             card or not, you were entitled to order him to  
12             answer questions, weren't you?

13      A.     At that time I probably could have, yes.

14      Q.     Probably could have or definitely could have?  
15             He's one of your subordinates.

16      A.     I definitely could have.

17      Q.     And you chose not to?

18      A.     I chose not to.   He has an attorney.   We'll do  
19             the investigation and the chips will fall  
20             where they fall.

21      Q.     Now, you had to reach a conclusion based on  
22             the investigation as to whether or not he had  
23             done the things he had been accused of,  
24             correct?

25      A.     Yes.



1 Q. And you concluded that he lied to you about  
2 transactions involving Internet sale of radio  
3 equipment?

4 A. When he made the statement in that meeting, he  
5 was emphatic that he had never used his  
6 position within the Police Department.

7 Q. Did you review all of the Ebay documentation  
8 before bringing these charges?

9 A. At that time, when he made that statement, I  
10 did not have all the Ebay documents yet. I  
11 made that determination after.

12 Q. Okay.

13 A. I'm going to stand by that.

14 Q. Did you look at the Ebay information after?

15 A. Yeah.

16 Q. Did he ever identify himself as a Police  
17 Officer in any of the Ebay documents?

18 A. Yeah -- not the Ebay documents. His dealings  
19 with --

20 Q. Brinkley?

21 A. Brinkley.

22 Q. Okay. Now, if I tell you that Brinkley's was  
23 never involved in any sales of radio equipment  
24 and, in fact, he was doing this for a favor  
25 for Newcomerstown PD and Roswell PD and never

1           received money for it, does that take it out  
2           of your question involving the Internet sale  
3           of radio equipment?

4       A.    No.

5       Q.    Why not?

6       A.    Because I think that he has a duty then to  
7           explain that he's not doing it as a New  
8           Philadelphia Police Officer.

9                   He did not do that and in that  
10           document, when I read that, it makes me  
11           believe that he's using his position as a  
12           Captain within a Police Department for  
13           unmarked cars within this Department.

14                   Nowhere in any of that statement does  
15           it say, "Newcomerstown" or "Roswell" and I  
16           would be highly suspect as to why  
17           Newcomerstown or Roswell can't do it  
18           themselves.

19       Q.    If they have somebody who is willing to do it  
20           for them, why would they need to, Chief?

21       A.    Then why shouldn't he tell us that he's doing  
22           this for them?

23       Q.    Understand, Chief, it's your job here to prove  
24           that he did it, not my job to prove he  
25           didn't.

1 A. And I feel the man did it.

2 Q. Okay. Now, could you have phrased your  
3 question any better on August 4th?

4 A. Probably. Semantics can always been rephrased  
5 after the fact, yes.

6 Q. Semantics, Chief?

7 A. Yes.

8 Q. Are you a trained investigator?

9 A. Yes, I am.

10 Q. You're trained to ask the questions to get the  
11 answers that you need?

12 A. Yes.

13 Q. In this case the answer you got wasn't what  
14 you needed, was it?

15 A. I feel that the man -- what the man's  
16 statement -- the statement the man made in  
17 that meeting, the facts later bore out that he  
18 lied to me.

19 Q. The Hootman investigation triggered this whole  
20 investigation into the Ebay matter, right?

21 A. I believe that originally the Brinkley matter  
22 came into Denny Vitt, not Larry Hootman.

23 Q. But the Ebay question was Hootman's  
24 investigation, right?

25 A. That and Arrendondo kicked in when he was made

1           aware of it, yes.

2       Q.    Was any of the discipline finally issued to  
3           Captain Cimperman as a result of the Ebay  
4           investigation?

5       A.    No.

6       Q.    Why not?

7       A.    Because I felt when I looked at that, it  
8           didn't appear to me that he had used his  
9           position there, but in his statement to me and  
10          in his position with Brinkley Electronics, he  
11          definitely had said that he had not used his  
12          position.

13                       In the Brinkley Electronics Emails,  
14          he signed his name, "Captain David F.  
15          Cimperman, New Philadelphia Police  
16          Department."

17       Q.    Is there any reason he can't sign his name to  
18           an Email with his identification as a Police  
19           Officer?

20       A.    He was seeking radios to be programmed under  
21           the authority of the New Philadelphia Police  
22           Department when he did that.

23       Q.    Well, Chief, if he goes out to buy a baton and  
24           they ask him if he's a Police Officer and he  
25           says, yes --

1 MR. TSCHOLL: Objection.

2 Argumentative at this point.

3 THE ARBITRATOR: Let him finish the  
4 question, please.

5 Go ahead.

6 Q. If he goes out and buys a baton and they ask  
7 him if he's a Police Officer and he says, yes,  
8 and pulls out a badge, has he done the same  
9 thing that you're accusing him of doing now?

10 MR. TSCHOLL: Objection.

11 THE ARBITRATOR: Overruled.

12 A. In one respect, yes. In one respect, no.

13 Q. In which respect yes and in which respect no?

14 A. Well, all right, the public can buy batons,  
15 also. The shopkeeper may have asked him if  
16 he's a Police Officer. If he identifies  
17 himself as a Police Officer, fine, but the  
18 programming of the radios with police  
19 frequencies that are capable of transmitting  
20 on police frequencies, John Q Public can't  
21 get.

22 Q. Is that a State or Federal law?

23 A. I believe that's a FCC --

24 Q. Regulation?

25 A. -- regulation.

1 Q. And is it your understanding that the FCC  
2 outlaws broadcasting on a police band without  
3 permission or possessing the ability to  
4 broadcast on a police band without permission?

5 A. I can't --

6 Q. You can't tell the difference?

7 A. I can't tell you which one they outlaw. I  
8 know I can't -- as a citizen, I can't go get a  
9 radio programmed to transmit on a police  
10 frequency. That would be a violation.

11 Now, I can't tell if you the FCC  
12 outlaws it or it's a state law.

13 Q. But when you say it's a violation, you're  
14 going to need to tell me it's a violation of  
15 what?

16 A. I think it's a FCC rules but I can't tell you  
17 that it's a law. It's FCC rules and  
18 regulations.

19 Q. So it could, in fact, be that these radios's  
20 capacities are just as a courtesy to the  
21 Police not selling radio or police band radios  
22 to civilians, couldn't it?

23 A. They could sell radios to civilians if it had  
24 a receive or scan only function. They cannot  
25 sell to a civilian that has capability of

1 transmit.

2 Now, if that's a FCC rule or if  
3 that's a federal law, I can't tell you, but I  
4 know that you couldn't do this. JQ Public  
5 can't get a radio and start transmitting on  
6 police frequency. It's a violation.

7 Q. Okay. Would it surprise you to know that you  
8 can, in fact, buy the same model radio as your  
9 cars are currently using from Motorola, and  
10 buy the software and all the hardware  
11 necessary to program it for whatever frequency  
12 you want?

13 A. Well, it surprised me when I heard the radio  
14 man testify to that down here, yeah.

15 Q. So you're saying it's illegal to sell the  
16 radio programmed to get the police frequency.  
17 It's legal to sell the radio and the software  
18 to program it to make it a police radio?

19 A. You lost me there.

20 Q. Okay. When Ken from Staley's came in here and  
21 testified that I, me, Mike Piotrowski, could  
22 call Motorola and buy the radio and the  
23 software to program it off the Internet or  
24 over the phone, that surprised you, right?

25 A. Yes.

1 Q. Because that would give me the capability of  
2 taking that radio, hitting a couple of key  
3 strokes and making it broadcast on police  
4 frequencies, right?

5 A. Yes.

6 Q. And you understand that to be a legal sale.  
7 Motorola is not selling me something black  
8 market, are they?

9 A. No, I can't tell you that it's an illegal  
10 sale. I think the fact that if you program it  
11 in your radio -- and like I say, again, it's  
12 either an FCC rule or regulation or maybe it  
13 could be a violation of federal law, I'm not  
14 up on all the ins and outs there, but I know  
15 that JQ Public can't go and utilize a police  
16 radio in a transmit mode.

17 Q. You said, "utilize"?

18 A. Well, you can't get that frequency and go out  
19 and start transmitting on police frequencies  
20 all over the country. It's not applicable.

21 Q. But I can buy the radio as long as I don't use  
22 it?

23 A. You can buy the radio. I can't tell you  
24 whether or not you can have that radio  
25 programmed with that police frequency in it to



1 transmit. You can buy the radio probably with  
2 a receive crystal in it, but I'm not a radio  
3 expert. I want you to understand this.

4 Q. So you don't actually know whether or not  
5 there's an FCC regulation forbidding the  
6 possession of transmitting police band radios  
7 by civilians?

8 A. I would think that there is.

9 Q. But you can't point it out?

10 A. What I'm saying is, that I would think that  
11 there is, but I can't tell you what it is.

12 Q. Now, Dave Cimperman's portable radio, it  
13 broadcast on police frequencies, didn't it?

14 A. Yeah, it's issued by the Police Department.

15 Q. What about the one he owned personally?

16 A. I was not aware of that.

17 Q. Well, you knew he was carrying something after  
18 they took away his issued portable radio,  
19 right?

20 A. I was under the impression that he was given  
21 another radio.

22 Q. Who gave you that impression?

23 A. Just what I thought, like I say.

24 Q. You don't know who gave you that impression?

25 A. No, not offhand. I don't know if he was

1           issued another radio or not.

2       Q.     Chief, when was the last time you replaced  
3           your radios?

4       A.     What do you mean "replaced"?

5       Q.     The system, the portables, the car radios?

6       A.     It was when the county went to the 911  
7           system. We were on the old Motorola -- or we  
8           had Motorola frequencies; the 155.73.

9       Q.     Do you remember when that was?

10      A.     I can't tell you the exact date. It was  
11           whenever the county went to the 911 system.

12      Q.     Early '90s? Late '90s?

13      A.     Probably early '90s. I can't be certain.

14      Q.     Were you the Chief then?

15      A.     Yes.

16      Q.     What happened to the old radios?

17      A.     They were traded into Staley's.

18      Q.     Traded into Staley's?

19      A.     But we were issued new 911 radios.

20      Q.     Did you ever auction any off?

21      A.     No.

22      Q.     None? Has the Department ever auctioned off  
23           any police radios?

24      A.     No.

25      Q.     Now, you're aware that Captain Cimperman paid

1 the fines for Lola Arrendondo, right?

2 A. Yes, he paid them after he was confronted by  
3 Wendy Jones, yes.

4 Q. And do you know how that conversation went?

5 A. Only based upon her statement and what she  
6 testified to in here.

7 Q. And do you know how long after she mentioned  
8 it to him that he paid it?

9 A. Based on the document, it was the next day.

10 Q. Based on the document. It may have been the  
11 day before, too, couldn't it?

12 A. I believe the document said the day after, the  
13 28th, I think.

14 Q. Flip to page 30. Do you recognize that  
15 document?

16 A. A criminal case receipt screen used by Muni  
17 Court.

18 Q. And have all the fines and fees been made as  
19 of the time of the printing of this report?

20 A. Balance due zero.

21 Q. Okay. Now, what date was this report printed?

22 A. Well, I can't tell you what date it was  
23 printed. The date entered here is 7/28 of  
24 2000.

25 Q. Okay. And how many dollars were received

1           today on 7/28/00? Far right-hand column?

2       A.    There's nothing there. It's blank. You have  
3           a total owed, paid to date, balance due,  
4           received today.

5       Q.    And there's nothing in the received today?

6       A.    No.

7       Q.    So why doesn't this document tell us that the  
8           fines were paid prior to 7/28/00?

9       A.    You're going to have to ask Muni Court that  
10          question. I can't tell you that.

11      Q.    But, Chief, you're the one that determined the  
12          order in which this occurred in order to  
13          discipline Captain Cimperman. So you're going  
14          to need to tell me why it was --

15      A.    The only thing I can base that on is the date  
16          above, the 7/28/00.

17      Q.    So on 7/28/00 the fines had been paid and  
18          nothing had been received today, right?

19      A.    I don't know how Muni Court does it. The date  
20          on this is 7/28/00.

21      Q.    Chief, isn't it kind of important for you to  
22          know what date the money was paid?

23      A.    Based upon what I'm looking at here, it was  
24          paid the next day.

25      Q.    The next day?

1 A. The 28th.

2 Q. How do you know that? Where on the form does  
3 it say it was paid on the 28th?

4 A. The only thing that I can go by is the date  
5 that's on it, 7/28/00.

6 Q. And you don't know when this was printed out?

7 A. Which document are you talking about?

8 Q. Well, I think 30 is a continuation of 29?

9 A. I can't tell when it was printed out. It has  
10 a file date of 4/10/00. It's dated criminal  
11 case information hard copy.

12 Q. Okay. Who is the check that Dave Cimperman  
13 received made out to?

14 A. I believe it was made out to him.

15 Q. Okay. And what was he supposed to do with  
16 that check?

17 A. You want my honest opinion what he was  
18 supposed to do with it?

19 Q. Yeah.

20 A. He should have endorsed the back of it and  
21 immediately turned it into the court.

22 Q. Does the court take two-party checks in the  
23 payment of fines?

24 A. Sure do.

25 Q. They do?

1 A. Yeah, I've got stuff here sent to the Police  
2 Department. I sign it, "New Philadelphia  
3 Police Department." I sign it, "Chief Thomas  
4 R. Staggers," and I hand it to the court.

5 Q. Okay. Do they take checks written out to  
6 civilians or to individuals; two-party checks?

7 A. That I can't tell you.

8 Q. So would one of your officers know that,  
9 whether or not they would take that as a  
10 check?

11 MR. TSCHOLL: Objection.

12 MR. PIOTROWSKI: He's disciplining  
13 him as a result of failing to know that and  
14 failing to follow the proper procedure.

15 MR. TSCHOLL: How would he know  
16 what one of his officers would think?

17 THE ARBITRATOR: Well, I think it  
18 goes to not the mindset of the officer, but I  
19 take the question to mean that if he knows the  
20 policies with which his department would be  
21 familiar in the pavement of fines, so I'll  
22 permit the question to stand.

23 Q. Would one of your officers know?

24 A. I think common sense they would know that,  
25 yes.

1 Q. Know that --

2 A. To endorse that check and get it into the  
3 court, yes.

4 Q. Is that what you think that Lola Arrendondo  
5 intended when she wrote the check out to Dave  
6 Cimperman?

7 MR. TSCHOLL: Objection.

8 THE ARBITRATOR: Sustained.

9 Q. When Dave Cimperman received that check it was  
10 made out to him, correct?

11 MR. TSCHOLL: Asked and answered.  
12 Objection.

13 MR. PIOTROWSKI: We can waste a whole  
14 lot of time this way, Bob.

15 THE ARIBITRATOR: I assume this is  
16 foundational. Go ahead.

17 Q. So was it beyond the common sense realm you  
18 just talked about for him to deposit that  
19 check into his account so that he could write  
20 a check to the court?

21 A. I have received checks. Common sense tells me  
22 that you don't put it into your personal  
23 account.

24 Q. Hold up, Chief. Have you received checks made  
25 out to you?

1 A. Yes.

2 Q. Personally to Chief Staggers?

3 A. Not as Thomas R. Staggers, but as Chief  
4 Staggers or New Philadelphia Police Department  
5 and I -- as Chief Staggers, I sure don't put  
6 them in my personal account.

7 Q. And is there a policy that says what to do in  
8 this particular situation?

9 A. I believe we don't have one in effect, no.

10 Q. Is there a policy that determines what  
11 officers are to do if somebody pays their fine  
12 on the side of the road?

13 A. We -- officers cannot accept fines on payment  
14 on the side of the road. Receipts have to be  
15 issued. There's no way an officer can do  
16 that.

17 Q. Did you understand the Lola Arrendondo's and  
18 Dave Cimperman's friendship to go beyond that  
19 of civilian - servant and citizen?

20 A. My understanding is that there was a  
21 relationship, not between him and Lola  
22 Arrendondo, but either her mother or some  
23 relation to hers that it was --

24 Q. So she was a friend?

25 A. Lola was a friend of Dave's, yeah.



1 Q. And when she sent -- let me withdraw that.

2 So Dave was doing a favor for Lola,  
3 was that your understanding?

4 A. I don't know what Dave was doing.

5 Q. Okay. Is there any policy that forbids  
6 selling items over Ebay?

7 A. No.

8 Q. Is there any policy that would have forbidden  
9 Dave Cimperman from helping out officers from  
10 Roswell and Newcomerstown?

11 A. I don't know quite how you mean that when you  
12 say "helping out."

13 Q. Getting some radios reprogrammed for them?

14 A. Only if he's used his position as a Police  
15 Officer within this Department and I think  
16 it's definitely an ethical situation, because  
17 let's face it, people like police officers and  
18 police officers can get favorable  
19 consideration in dealings if they make it  
20 known they're police officers.

21 Q. But under that testimony, you would be  
22 invalidating your earlier statement that  
23 there's nothing wrong with flashing a badge to  
24 buy an expanding baton?

25 A. No, not if the individual asks me.

1 Q. But, Chief, you said it was okay to flash the  
2 badge to buy the baton, didn't you?

3 A. Only if the man asked for his  
4 identification, "Are you a police officer?"

5 How am I going to show you I'm a  
6 Police Officer? Either I show you an ID card  
7 or I show you a badge. How do you know that  
8 I'm a Police Officer?

9 Q. So if you're asked if you're Police Officer,  
10 it's okay to identify yourself?

11 A. I think it is, yes.

12 Q. Now, do you know if the first letter sent to  
13 Brinkley Electronics identified Captain  
14 Cimperman as a Police Officer?

15 A. I would have to go back and look. I don't  
16 know off the top of my head right now.

17 Q. Why don't you go back and look, Chief?

18 A. Which item?

19 Q. Your guess is as good as mine.

20 MR. TSCHOLL: Is it 1?

21 Q. Flip to page 5, Chief.

22 A. (Witness complies.)

23 Q. Now, that is dated 6/13/00, right?

24 A. Tuesday, 13 June, 2000, yes.

25 Q. Okay. And is that the printout date or the

1 date it was mailed or --

2 A. That's probably the date it was sent.

3 Q. Okay. How does that jog with a 2/27/00 date  
4 that they have already been sent?

5 A. I don't know.

6 Q. You don't know what order these messages took  
7 place then?

8 A. No.

9 Q. You don't know if somebody from Brinkley  
10 Electronics asked Captain Cimperman if he was  
11 a Police Officer?

12 A. All I know is Brinkley Electronics inquired  
13 here 7/31 of 2000.

14 Q. So the 13th June date is more likely to be  
15 accurate than the other date, isn't it? The  
16 2/27/00.

17 A. Yes, that could be a typo. I don't know.

18 Q. Okay. So on 13 June, did Dave Cimperman  
19 identify himself as a Police Officer?

20 A. In which item are you looking at, again?

21 Q. Five.

22 A. No.

23 Q. And do you know what ultimately made him  
24 identify himself as a Police Officer?

25 A. I believe the fact that he wanted police

1 frequencies in the radios and Brinkley had to  
2 verify that he was an individual associated  
3 with a department.

4 Q. Okay. And so Brinkley would have been the one  
5 asking him to identify himself as a Police  
6 Officer?

7 A. I believe so.

8 Q. Now, isn't that what you just said?

9 A. That's what I just --

10 Q. If the vendor asks you to identify yourself,  
11 you're permitted to identify yourself?

12 A. Yes, but he has no authority to use his color  
13 as a New Philadelphia Police Officer, or as  
14 you said, Newcomerstown or Roswell, without my  
15 authority.

16 He's doing something that he  
17 shouldn't be doing for another department.

18 Q. Why shouldn't he be doing it?

19 A. First of all, if that's the case, then he  
20 needs to be a Newcomerstown Officer or a  
21 Roswell.

22 Q. Why is that, Chief? You said it's okay for  
23 them to help.

24 A. In certain circumstances.

25 Q. This is not one of those circumstances?

1 A. I don't think it is.

2 Q. Because you don't like him?

3 A. Who?

4 Q. Dave Cimperman?

5 A. No, I have nothing personal against Dave  
6 Cimperman.

7 Q. Why didn't you clarify your question on 8/4/00  
8 then?

9 MR. TSCHOLL: Objection.

10 THE ARBITRATOR: Sustained.

11 Q. Okay. So here, Chief, your testimony is that  
12 he wasn't allowed to identify himself as a  
13 Police Officer because he was getting these  
14 radics for Newcomerstown and Roswell?

15 MR. TSCHOLL: Objection.

16 A. I didn't say that.

17 Q. Why wasn't it okay for him to identify himself  
18 as a Police Officer then?

19 A. It's okay for --

20 MR. TSCHOLL: Objection. Can I --

21 THE ARBITRATOR: Go ahead. The basis  
22 for your objection?

23 MR. TSCHOLL: The charge is that  
24 he was dishonest. Okay? I think we're going  
25 far afield based upon the Chief's conversation

1 with Mr. Cimperman and the question that was  
2 asked on August the 4th regarding what he was  
3 doing with his Internet transactions and  
4 sales.

5 And, you know, now we're getting  
6 into, you know, was it okay for him to do that  
7 and that. I mean, that doesn't have anything  
8 to do with the charge.

9 I mean, the Chief has testified that  
10 he was dishonest with him regarding his  
11 response. That's the issue. Whether or not  
12 he could help out Roswell or Newcomerstown,  
13 that's not the issue here. Whether or not he  
14 could flash his badge to buy a mobile baton or  
15 an M50 tank, that's not the issue here.

16 The issue is he was dishonest on  
17 August 4th when he was asked about how he was  
18 using his position. All this other stuff is  
19 just not pertinent to this inquiry.

20 MR. PIOTROWSKI: I understood the  
21 charges to be, in part, that he was tampering  
22 with the equipment by having the 4150s  
23 modified.

24 We have spent a great deal of time  
25 talking about that, rather than merely the

1 statement on August 4th.

2 THE ARBITRATOR: The modification of  
3 the 4150s does involve Brinkley Electronics?

4 MR. PIOTROWSKI: That's solely what  
5 Brinkley Electronics does.

6 THE ARBITRATOR: And earlier on I  
7 thought Staley's was involved in this process,  
8 but I agree that this line of questioning is,  
9 therefore, appropriate and we'll permit it to  
10 continue. Objection is overruled.

11 BY MR. PIOTROWSKI:

12 Q. Chief, if Captain Cimperman had wanted a  
13 police radio for his own car and he had it, is  
14 there anything preventing him from  
15 reprogramming it to broadcast on police  
16 frequencies?

17 A. I believe he has to get authority from me.  
18 Other departments have requested our  
19 frequencies. They've contacted me. I've  
20 allowed it through our radio programmer,  
21 Staley's Electronics.

22 Q. So Staley's tells them they have to talk to  
23 you?

24 A. Right. Specific deputies have gone down and  
25 wanted to get their radios programmed with the

2 New Philly Police channel. Staley's will not  
3 do it unless I authorize it.

4 Q. And you understand that to be as a result of  
5 Staley's reading of the federal law or a  
6 common courtesy?

7 A. I think it's a little bit of both, but I can't  
8 tell you to the federal law.

9 Q. Okay. You accused Captain Cimperman of  
10 violating criminal or civil laws, right?

11 A. When he reprogrammed the New Philadelphia  
12 Police radios, the portable and the cruiser  
13 radio, I'm not talking about the SM --  
14 whatever those are.

15 Q. So the only allegation of violations of  
16 criminal or civil law are in regards to Rocky  
17 Dusenberry's radio and the car radios. The  
18 actual New Philadelphia radios?

19 A. You're correct.

20 Q. Okay. So the SM-4150s, the reprogramming them  
21 in and of itself is not the subject of any  
22 discipline here?

23 A. No.

24 Q. Merely the fact that he identified himself as  
a Police Officer during the process of that  
reprogramming. And even that's not



1 necessarily a violation, it's him telling you  
2 that he hadn't done that that constituted the  
3 violation, right?

4 A. When I received the note from Brinkley  
5 Electronics dated 7/31 --

6 Q. Well, Chief, hold up. You didn't receive a  
7 note --

8 THE ARBITRATOR: Pardon me. Let the  
9 Witness finish his answer and then you can  
10 revisit the issue.

11 A. I received a note that Brinkley Electronics  
12 had inquired as to whether Dave Cimperman was  
13 a Police Officer with this Department.

14 The note stated that evidently he had  
15 radios that he wanted to get reprogrammed and  
16 the dispatcher had advised Brinkley's to  
17 contact me, which they never did.

18 Q. So just so we're absolutely clear. You never  
19 did talk to Brinkley Electronics, right?

20 A. I never talked to Brinkley Electronics.

21 Q. And we're to assume from page 19 that North  
22 Carolina Electronics called on 7/31, that that  
23 was actually Brinkley Electronics, not North  
24 Carolina Electronics, right?

25 A. Right.

1 Q. And if that dispatcher screwed up something so  
2 basic as the name of the people calling, can  
3 we also assume that he or she may have screwed  
4 up some portion of the remainder of the note?

5 A. I can't tell you whether they screwed it up or  
6 not.

7 Q. But you do recognize that the first line  
8 contains a major --

9 A. It says North Carolina Electronics.

10 Q. And that's not the same name of the  
11 organization that called, is it?

12 A. I believe the terminology we have is Brinkley  
13 Electronics.

14 Q. Okay. So how do we know this is even the same  
15 place?

16 A. It may not be. I don't know.

17 Q. Now, Chief, you stated a couple of times that  
18 Dave Cimperman's activities created an untaped  
19 phone line. What are you talking about?

20 A. When you program the portable radio like Rocky  
21 Dusenberry's, that's what I'm talking about.

22 Q. What portion of that programming?

23 A. That allows it to make a cellular phone call.

24 Q. Okay. What evidence do you have that Captain  
25 Dave Cimperman programmed that radio to do

1           that?

2       A.    Well, I really don't have any evidence.   He  
3           admitted in here that he had it done.

4       Q.    Didn't Ken Staley admit in here that most or  
5           if not all the radios have that function in  
6           them and since the lightning strike, they can  
7           all make phone calls?

8                   MR. TSCHOLL:       Objection.   You  
9           know, Mr. Cimperman stated that he had it  
10          reprogrammed to permit the operation of the  
11          cell phone.

12                   MR. PIOTROWSKI:   No.

13                   THE ARBITRATOR:   Woe.   Let him  
14          finish.   Are you finished?

15                   MR. TSCHOLL:       And then he said  
16          that the lightning strike activated the other  
17          portable radios, but it was very clear that  
18          Mr. Cimperman admitted he had Rocky  
19          Dusenberry's portable radio reprogrammed so  
20          that the cell phone feature became  
21          operational.

22                   MR. PIOTROWSKI:   Absolutely untrue.  
23          He admitted that he had the radio include the  
24          cruiser selected scan function and the page  
25          mode, but those are the only two things

1 Dusenberry's radio was modified to do and  
2 those are the only two things Dusenberry's own  
3 statement says the radio was modified to do.

4 He said later he was playing with the  
5 radio and he discovered the telephone  
6 feature. And Kenny Staley testified that he  
7 also found the telephone feature activated on  
8 Shawn Nelson's radio, which was the one they  
9 were using for a baseline for comparison. And  
10 that, in fact, their organization, Staley's,  
11 programmed these radios to include the cell  
12 phone feature, but then locked them out of the  
13 cell phone feature - which is a misnomer by  
14 the way - at the programming level at the  
15 tower.

16 If you recall, then he said the tower  
17 programming got fried and all of a sudden, all  
18 the phones that used to be locked out could  
19 make these phone calls. And that's when they  
20 stopped charging and asking, etc.

21 But there has been no admission by  
22 Mr. Cimperman that he reprogrammed any police  
23 radio to make phone calls.

24 MR. TSCHOLL: I can't say I recall  
25 specifically the testimony of Mr. Cimperman on

1           that.

2                   THE ARBITRATOR:   Based upon your  
3           representations, Counsel, I will permit this  
4           line of inquiry to proceed.

5           BY MR. PIOTROWSKI:

6           Q.    So, Chief, what evidence did you have that  
7           Captain Dave Cimperman had anything to do with  
8           the phone patch function being added to the  
9           portables?

10          A.    Rocky Dusenberry's was a new radio.  It did  
11          not have the capability, to my knowledge,  
12          activated to make cell phone calls.

13          Q.    Did Shawn Nelson's?

14          A.    It may have had.

15          Q.    Shawn Nelson's --

16                   MR. TSCHOLL:       Let him finish.  
17          Please let him finish.

18                   THE ARBITRATOR:   Yes.

19                   MR. TSCHOLL:       Were you done,  
20          Chief?

21          A.    I was just going to say, I can't tell you that  
22          Shawn Nelson's was a new radio.  It might have  
23          been an officer that had left and it was an  
24          older radio and it was issued to Shawn Nelson.

25          Q.    So nobody else has mentioned that Rocky

1 Dusenberry's radio was brand new and that he  
2 couldn't possibly have that radio function in  
3 it. Is this something that you are the only  
4 one that knows?

5 A. I believe Rocky was the one that mentioned  
6 that to me.

7 Q. That what? His radio --

8 A. His was a brand new radio. I just don't  
9 remember when he said it.

10 Q. Do you remember Kenny Staley saying that they  
11 programmed those phone numbers into many of  
12 the radios?

13 A. When we first got the radio system, yes, those  
14 were programmed in, but they were not  
15 activated. It's a feature I declined to  
16 accept.

17 Q. But do you know if they're still being  
18 programmed in, but not activated?

19 A. I can't tell you. We don't use it.

20 Q. Now, if, in fact, the lightning strike caused  
21 that programming feature to work, Staley's  
22 would not be disobeying your instructions,  
23 would they?

24 A. With regards to?

25 Q. Not activating the phone patch?

1 A. Yeah, I'm not going to use -- I can't speak  
2 for Staley's. We don't utilize the phone  
3 patch, so I can't speak for Staley's.

4 Q. Okay. But it is available in some of your  
5 portables, right?

6 A. It's a feature that's available. It's not  
7 activated. To my knowledge, it's not  
8 activated.

9 Q. Do you know if Dusenberry's radio had ever  
10 been programmed to make those phone calls?  
11 Had numbers ever been put in Dusenberry's  
12 radio?

13 A. Not to my knowledge.

14 Q. Do you know if any of the radios have ever  
15 been programmed to do so?

16 A. Initially when we got the radios,  
17 subsequent -- like I say, it's a feature I  
18 didn't activate.

19 Q. Okay. We know that the radios are capable of  
20 making these phone patch calls, right, Chief?  
21 Just yes or no?

22 A. Yes.

23 Q. And we know that you never wanted that feature  
24 activated, right?

25 A. That's correct.

1 Q. Okay. But we also know that for some period  
2 of time, Staley's included phone numbers in  
3 the programming of those radios, but blocked  
4 use of that function from the tower?

5 A. Okay. I don't know how they did it.

6 Q. Were you here for Kenny's --

7 A. Yeah, I heard it, but how they did it, that  
8 was news to me.

9 Q. But you do know that some of the phones, at  
10 least, were programmed with phone numbers?

11 A. When we initially got the radio system, the  
12 portable, it was a feature that was programmed  
13 in. Because mine has a dial pad, I said, "I  
14 don't want this. I do not want my officers  
15 making cellular phone calls." I mean, I  
16 foreseen problems then. No, it's not a  
17 feature we want and also I don't have the  
18 budget for the additional cost. So it's not a  
19 substance that we utilize.

20 Q. You never wanted this?

21 A. No.

22 Q. Then why do some of the radios have phone  
23 numbers in them?

24 A. It's an initial programming from way back when  
25 we first got the radios.



1 Q. And that initial programming, that basic  
2 programming, has never changed, has it?

3 A. I don't know how the programming has changed.  
4 I'm not the radio guy.

5 Q. So when you say that Rocky Dusenberry's radio  
6 was probably new and probably didn't have this  
7 in it, you're basing that on pure presumption  
8 on your part, correct?

9 A. I ordered a new radio for Rocky Dusenberry and  
10 it was, I think, years ago. I mean, not in  
11 the early '90s, back when he first got hired,  
12 we had to buy an additional radio. We were  
13 short a radio, because he was additional  
14 manpower. I ordered a radio.

15 Q. Okay. So you have no knowledge of whether or  
16 not Dusenberry's radio had phone numbers  
17 programmed into it from Staley's?

18 A. No.

19 Q. Okay. So if you don't know that, how do you  
20 know that Captain Cimperman -- why do you  
21 that he put those numbers in there if you  
22 don't know Staley's didn't?

23 A. The only thing I can base that assumption on ,  
24 first of all, is there was reprogramming done  
25 to the radio. It's a feature that I haven't

1        allowed and all of a sudden it's in this  
2        radio. And it's not only the fact that we're  
3        reprogramming this radio for a phone, it's  
4        also -- that's only one example. This radio  
5        was reprogrammed to scan, which created a  
6        safety issue. It was something this officer  
7        wasn't permitted to do.

8        Q.    Okay, Chief, we're focusing on the phone patch  
9        here.

10      A.    All right.

11      Q.    Isn't it true that you have no evidence  
12      linking Dave Cimperman with the modification  
13      allowing the radio to make phone calls?

14      A.    I can't tell you what all he programmed into  
15      it. My understanding is it wouldn't do it.  
16      He reprogrammed it, now it does it. It's  
17      logical that that was part of what they did.

18      Q.    Okay. Do you recall Rocky telling you whether  
19      or not Captain Cimperman - or Officer  
20      Cimperman at that time - had demonstrated the  
21      new features of his radio for him?

22      A.    Only his testimony down here that he testified  
23      to.

24      Q.    Did you read his report before you made your  
25      decision?

1 A. Yeah, and there's a statement here that he  
2 showed me.

3 Q. To page and scan?

4 A. It could be. Without reading it, again, off  
5 the top of my head, I can't tell you.

6 Q. But from your letters it's right to assume  
7 that the biggest problem was the phone  
8 problem, wasn't it?

9 A. When I initially -- when Officer Cimperman was  
10 initially placed on Administrative Leave, the  
11 only function that I knew about at that time  
12 was the phone feature. Then after he was  
13 placed on Administrative Leave and I get the  
14 programming report, the result of the  
15 investigation that Captain Calderon had  
16 conducted, there are other things that I'm  
17 made aware of as the scan feature and the fact  
18 that the man could not transmit to the fire  
19 department.

20 I've been made aware of this now, but  
21 this was after he was placed on paid  
22 Administrative Leave.

23 At the time he was placed on paid  
24 Administrative Leave, the only function that I  
25 really was cognizant of and the only example I

1           cited, was the phone feature.

2       Q.     But, Chief, day one of this investigation,  
3           didn't Calderon get told about the scan and  
4           the page?

5       A.     I don't know when Calderon got that. I told  
6           the man to investigate it, "Get me a report."  
7           I got the report after this man is placed on  
8           paid Administrative Leave.

9                   The only function I knew at the time  
10          was that Rocky Dusenberry had the capability  
11          of making phone calls. That's only one of --  
12          I don't know what all he programmed into it or  
13          took out of it. I'm not an electronic's  
14          expert.

15                   The radio was modified. It was  
16          tampered with. He had no authority to do that  
17          or have it done. The only person that I had  
18          do our radio equipment, is Staley's  
19          Electronics.

20       Q.     So even if he went to somebody else to do it,  
21           a Motorola expert to have this done, he was  
22           tampering with your equipment, right?

23       A.     Without my authority to do it, yes.

24       Q.     And when Rocky Dusenberry went to him and  
25           said, "Could you do this with my radio?" He

1           was tampering with your equipment, too, wasn't  
2           he?

3       A.    Are you asking me if Rocky tampered with it?  
4           Yeah, I guess.

5       Q.    He's just as guilty, in fact, as Captain  
6           Cimperman of going out and finding somebody to  
7           change his radio, right?

8       A.    I don't think he went to him. I think it was  
9           the other way around. Dave says, "I can do  
10          this for you."

11      Q.    Do you have other officers who have had their  
12          radios modified by Captain Cimperman?

13      A.    I'm not aware of any. Not that I know of.

14      Q.    Is there some profit motive on the part of  
15          Captain Cimperman to modify these radios?

16      A.    I can't speak to that. I don't know.

17      Q.    So he's going around the Department asking  
18          people, "Can I modify your radio for you?"

19                      MR. TSCHOLL:       Objection.

20                      Argumentative.

21                      THE ARBITRATOR:   Sustained.

22      Q.    Chief, is there anybody else that said he  
23          approached them and asked them to modify their  
24          radio?

25      A.    Not that I'm aware of.

1 Q. And is there anything in Rocky's report saying  
2 that Dave Cimperman approached him about  
3 modifying his radio?

4 A. I think he said in his report -- if I remember  
5 correctly, he stated he heard the radio doing  
6 this or something else and Dave said, "I can  
7 make yours do that."

8 Q. After Rocky asked him about it, right?

9 A. Yeah, I don't know how their conversation went  
10 or the terminology, but I believe that's what  
11 was in the report.

12 Q. But Rocky Dusenberry, in fact, went out of his  
13 way to give his radio to Dave Cimperman in  
14 order to have it modified, right?

15 A. Rocky Dusenberry gave his radio to Dave  
16 Cimperman to be modified.

17 Q. And, therefore, Rocky Dusenberry is guilty of  
18 tampering with his radio, isn't he?

19 A. I don't know how to say this.

20 Q. Yes or no, Chief?

21 A. I really --

22 Q. Just yes or no?

23 A. I don't think he is.

24 Q. He's not?

25 A. In one respect. I think under the Standards

1 of Conduct, he had the radio modified, yes, he  
2 had no authority to do that. How do I want  
3 to -- if you run a red light, are you going to  
4 run a red light unless an officer catches  
5 you? You know, I don't know how to say  
6 this.

7 Q. Are you saying because he reported it before  
8 he got caught --

9 A. I'm saying because he reported it, I probably  
10 didn't take any disciplinary action.

11 Q. None?

12 A. No.

13 Q. Not even a verbal reprimand?

14 A. I believe he got his reprimand from his  
15 Captain. I didn't have to be involved.

16 Q. Was it recorded in his record?

17 A. Counseling sessions or verbal reprimand by his  
18 supervisor are not placed in his record.

19 Q. So there's no record of a verbal reprimand?

20 A. The only knowledge I have is that he got --

21 Q. Reamed?

22 A. Politely. That's the polite word for it.

23 Q. So Rocky Dusenberry received a verbal  
24 counseling and Dave Cimperman received  
25 termination?

1 A. That's correct.

2 Q. Why the difference?

3 A. Well, one, Mr. Cimperman's action is he had no  
4 authority to do that. If he would have come  
5 to me, I would have said, "You go to Staley's  
6 if you need something. I'll have Staley's do  
7 it," but I'm not going to have some -- and I  
8 don't know if it's a licensed radio repairman  
9 or some backyard electronics freak playing  
10 with the radios, I don't know.

11 I'm not going to create a problem  
12 with our radio system unless it's done by our  
13 radio people. My feelings here are, he is a  
14 supervisor. He is an experienced Police  
15 Officer here. He knows the Standards of  
16 Conduct. And why I say he knows the Standards  
17 of Conduct, he's been to my office before on  
18 disciplinary problems. We've been through  
19 this. Maybe not this specific thing, but he  
20 knows the Standards of Conduct. He probably  
21 knows them better than I, because of the  
22 disciplinary actions he's had in the past.  
23 And he should know, you don't take the radio  
24 to get it changed without the Chief's  
25 authority.



1                   And, first of all, the question I'm  
2                   going to ask him is: "What are you going to  
3                   do with it?" And he's going to tell me and I'm  
4                   going to tell him, "No, you don't need that."

5       Q.    Isn't that also true for Rocky Dusenberry?  
6            Doesn't he also know that you're not supposed  
7            to get the radio modified?

8       A.    I think what you're asking me --

9                   MR. TSCHOLL:       Objection.   I think  
10            it's been asked and answered.

11                   MR. PIOTROWSKI:   I don't see how  
12            that's possible given the fact that --

13                   THE ARBITRATOR:   Overruled.

14       A.    I think you're asking me:   Where does Rocky's  
15            culpability come into this and that deals with  
16            a young officer versus an officer that's got  
17            experience on the Department.   The degree of  
18            culpability and, therefore, should be a  
19            termination offense for one versus the other.

20                   That's a judgment call that I've got  
21            to make.

22       Q.    And, in part, you base that on the fact that  
23            Captain Cimperman was a Captain, right?  
24            That's what you said earlier.   You said that  
25            he was a supervisor?

1 A. Yeah, he is. It wasn't -- when he did this,  
2 he wasn't.

3 Q. Prior to you promoting him, your Department  
4 knew about this, didn't they? They knew about  
5 it in early May?

6 A. When I was advised that the radios could have  
7 been tampered with, I said I want it  
8 investigated. Who did it or how it was done,  
9 I did not have that information.

10 Q. Chief, if it came to Captain Calderon's  
11 attention by Rocky Dusenberry saying, "I gave  
12 my radio to Dave Cimperman and he modified  
13 it," how can you not know Dave Cimperman is  
14 involved in that tampering?

15 A. Because I had not read Officer Calderon's  
16 report until after this man was placed on paid  
17 Administrative Leave.

18 Q. Did you notify Officer Cimperman about the  
19 investigation regarding the radios?

20 A. I believe not, because at the time, I did not  
21 know whose radios were involved or that it was  
22 a portable radio involved, or that it was a  
23 cruiser radio. My initial understanding was  
24 that it was a cruiser radio and I had told the  
25 Captain that I wanted it investigated.

1 Q. Let me make sure I understand this, Chief.  
2 Captain Calderon came to you. Informed you  
3 that some radios had been tampered with. Did  
4 not name any names?

5 A. I don't believe he did, no.

6 Q. And did not tell you whether or not it was a  
7 radio in the car or portable or both. Didn't  
8 tell you how many were involved?

9 A. Not at the time. When he made me aware of  
10 this, I said, "Look, I want this  
11 investigated. This is a violation of our  
12 Departmental policy and rules. You don't  
13 tamper." The only person authorized to do our  
14 radio repairs is Staley Electronics.

15 Q. And it's dangerous isn't, Chief?

16 A. You're damn right it's dangerous. Excuse me.

17 Q. So in May when you found out about this, why  
18 didn't you go out and make sure that the  
19 radios got fixed?

20 A. Number one, it was assigned to Captain  
21 Calderon to investigate. I don't know what  
22 all he had determined or developed.

23 Now, when you're asking me why I  
24 didn't run out and do this, number one, now  
25 we're here and it's like rules of evidence.

1           You have evidence. You don't tamper with it.  
2           You don't destroy it and as long as the other  
3           officers aren't aware that it's there, they  
4           can't use it and it can't hurt them.

5                     The two portables we pulled, we kept  
6           under lock and key. They've been under  
7           Captain Calderon's custody and control since  
8           then.

9       Q.    You left the radio in the car with the  
10           dangerous scan function functional --

11   A.    But I was not --

12   Q.    -- because you didn't think anybody else would  
13           discover that?

14   A.    I was not made aware of how dangerous the scan  
15           function was until after I received this  
16           report. That's what I'm trying to tell you.

17   Q.    Chief, how many channels were put in the scan  
18           function of the portables?

19   A.    I can't tell you. I'm not the radio guy.  
20           Kenny has to tell you that.

21   Q.    Well, Kenny testified that it was user  
22           selectable. You could choose how many  
23           channels?

24   A.    He probably put an unlimited number.

25   Q.    And how many channels do you have programmed

1 in the radios?

2 A. We have New Philly, Dover, our private, then  
3 there's --

4 Q. Well, are those three all on one scan or --

5 A. They're not on scan. You have to manually  
6 switch the radio to go and I'm not -- you have  
7 to manually change to that channel to talk to  
8 that police agency.

9 Q. And your radios don't scan at all then?

10 A. They could be put in a scan mode and my  
11 understanding of scan is only between Dover  
12 and Philly.

13 Q. Now, under Kenny's testimony, the Dover/Philly  
14 scan could lock out an important call from one  
15 or the other if you're getting a call from the  
16 first one, right? You can only get one radio  
17 reception, correct?

18 A. Yes.

19 Q. So you allow a scan of two, even though it's  
20 inherently dangerous, right?

21 A. That's the way the radio system is set up.  
22 It's not that I allow it. It's the way it was  
23 set up.

24 Q. How many does Dover have?

25 A. I don't know. Ask them.

1 Q. Now, if they have it set up so that it's user  
2 selectable, would that be evidence that it's  
3 not as dangerous as you said?

4 A. I don't know.

5 Q. Do you think that the Dover Police Department  
6 does things for the sake of --

7 MR. TSCHOLL: Objection.

8 Q. I'll change my question.

9 If one of your officers came to you  
10 and says, "Dover does this and they don't seem  
11 to have a problem," would you take that as  
12 evidence that it was, in fact, not a problem?

13 MR. TSCHOLL: Objection.

14 THE ARBITRATOR: I assume that this  
15 is not -- I'll overrule the objection. It's  
16 cross-examination.

17 A. If one of my officers come to me with that,  
18 I'd first probably contact the Dover Chief and  
19 see what he had done and then I would contact  
20 the radio -- Staley's, my radio people, to  
21 see. Then based on their recommendation,  
22 would I allow a change? Maybe. And based on  
23 their -- and maybe I wouldn't. I can't tell  
24 you what their recommendation would be.

25 Q. Okay. Now, were you aware that the scan

1 functions in car 024 had been discovered by  
2 one of the other officers using that car?

3 A. No.

4 Q. Did you check?

5 A. What do you mean, did I check? I didn't know.

6 Q. Well, Chief, you testified that since nobody  
7 knew it was there, it wasn't a problem to  
8 leave it in the car?

9 A. I didn't know it was there until I received  
10 Officer Calderon's report. Based upon that,  
11 then I decided to leave it alone.

12 Q. So when did you receive Calderon's report?

13 A. After this man was placed on paid  
14 Administrative Leave.

15 Q. So from early May until August --

16 A. I didn't know.

17 Q. You didn't know?

18 A. No.

19 Q. And you didn't consider a fault or a problem  
20 with your radio system to be of sufficient  
21 importance to track down the information?

22 A. I knew there was a problem with the car, only  
23 that it had been reprogrammed. I didn't know  
24 what the problem was until I received the  
25 report.

1 Q. When did you find out that Rocky Dusenberry's  
2 radio didn't work on the fire band?

3 A. Evidently in Calderon's report. I believe  
4 it's in there.

5 Q. Okay. And, again, when it was reiterated in  
6 the testimony here, were you aware that some  
7 of your cruisers have scanners in them?

8 A. Separate from the radios, yes.

9 Q. And that's okay?

10 A. I was asked if they could put those in there.  
11 One was a confiscated radio scanner that we  
12 took it in a criminal case, yes, that I  
13 approved.

14 Q. And they're still in the car?

15 A. Yes.

16 Q. Couldn't they broadcast over a call on the  
17 police radio?

18 A. Receive only. Not transmit. Receive only.

19 Q. So when the noise is coming out of the  
20 speaker, it in no way can drown out a police  
21 call?

22 A. I don't think so. It's no different than if  
23 they had the AM/FM or their rock and roll  
24 radio station on.

25 Q. So the car station could also drown out a call



1 from a fellow?

2 A. Yes.

3 Q. A scanner could do it? A call can do it?

4 A. Possibly.

5 Q. Anything else?

6 A. I don't know how it would. I mean, I'm a  
7 Police Officer. I've got my ear tuned to that  
8 car radio, the rest is background music.

9 Q. Are there any other officers carrying  
10 personally owned portable radios?

11 A. Not to my knowledge.

12 Q. I may have already asked this, but I'm going  
13 to ask it again: Did you ever notify Captain  
14 Cimperman that he was being investigated  
15 regarding the Brinkley Electronics  
16 modifications?

17 A. When we gave him the notice of being put on  
18 paid Administrative Leave, that's when we  
19 served him with notice.

20 Q. Okay. And that was after the 8/4 meeting,  
21 correct?

22 A. I think it was at the 8/4 meeting.

23 Q. That's when you told him that Brinkley's was  
24 the subject --

25 A. Not Brinkley's.

1 Q. Radio sales?

2 A. Radio sale transactions. However I put it in  
3 the letter.

4 Q. Okay. Did you ever talk to anybody down at  
5 Brinkley's Radios Incorporated or whatever  
6 it's called?

7 A. No.

8 Q. Okay. Do you know what kind of modifications  
9 were made to those radios?

10 A. Only based upon the Emails.

11 Q. And you testified that the radios they had  
12 were not Department equipment?

13 A. I don't know what a Maxon SM -- whatever that  
14 number was.

15 Q. What brand of radios do you use in your cars?

16 A. Motorola.

17 Q. So you know it's not the brand you use?

18 A. Right.

19 Q. Do you know if it's a police radio?

20 A. I can't tell you that. I don't know.

21 Q. Now, you testified that you -- and correct me  
22 if I'm wrong. You testified that you saw the  
23 Hootman report regarding the Arrendondo  
24 matter, right?

25 A. Yes.

Q. Okay. Did anybody ever assign Officer Hootman to investigate his supervisor?

A. Nobody ever assigned him. I understand how it came about.

Q. How is that?

A. Well, in the conversation with the Safety Director this morning --

Q. The Safety Director okayed it?

A. Yeah, he told -- evidently -- I can't speak for the Safety Director. You're going to have to ask him that question.

Q. Okay. So you had no knowledge of Hootman doing this investigation?

A. Not at the time, no.

Q. And is it normal for your officers to be undertaking investigations of other officers without notifying you?

A. Unless the Safety Director approves it.

Q. Has this ever happened before?

A. Not to my knowledge.

Q. Okay. Now, you are aware that Officer Hootman has a personal dislike for Captain Cimperman, aren't you?

A. I'm aware that neither one likes the other.

Q. Would Officer Hootman be your choice as an

1 independent investigator for Captain  
2 Cimperman?

3 A. No.

4 Q. Why not?

5 A. Because, first of all, I would have assigned  
6 him to a supervisor.

7 Q. You would have assigned it to --

8 A. Could have been Captain DiMatteo, Captain  
9 Calderon or probably Jeff Urban, Captain.

10 Q. Did -- never mind -- did BCI ever get charges  
11 brought against Captain Cimperman?

12 A. I believe they sent a report to the County  
13 Prosecutor. I don't know what the outcome of  
14 that is yet.

15 Q. If charges have been brought against Captain  
16 Cimperman, you would be aware of them?

17 A. Once a Grand Jury indictment is made public,  
18 yes.

19 Q. So at this point, no Grand Jury indictment has  
20 been made public?

21 A. Not to my knowledge.

22 Q. Do you know if they're investigating whether  
23 or not any federal laws have been violated  
24 against Captain Cimperman?

25 A. That is BCI's investigation to do, not mine.

1 Q. Now, you testified on Direct that the Wendy  
2 Jones's statement came from BCI?

3 A. I believe the copy that's there, I know it's  
4 part of their report. It may be part of the  
5 Hootman report.

6 Q. Well, it's on an New Philadelphia Police  
7 Department form, right?

8 A. Yeah, so it could be part of the Hootman  
9 report. If BCI came in here and wanted a  
10 statement, we would just use one of our  
11 statement forms.

12 Q. Okay. Is the radio in Car 24 still modified  
13 to permit scanning?

14 A. I have not changed it until the conclusion of  
15 this hearing.

16 Q. Now, that radio could be removed and replaced  
17 with a different radio and then you can keep  
18 it in an actual evidence locker, right?

19 A. I haven't gone to that expense. Probably  
20 could be, but I haven't gone to that expense.  
21 Like I say, it's my call, I guess. Somewhere  
22 along the line you've got to make a call. I  
23 decided not to do it, but like I say, a lot of  
24 this I did not learn until after he was placed  
25 on Administrative Leave. The officers still

1           aren't aware of it.

2       Q.   Well, except for the one that reported it,  
3           Simms?

4       A.   Right.

5       Q.   So you've got, at least, three people driving  
6           that car now, right?

7       A.   Yeah.

8       Q.   And that car with that piece of evidence could  
9           be involved in an accident where that piece of  
10          evidence was destroyed. And, in fact, you're  
11          not keeping track of the chain of custody on  
12          that radio, are you?

13      A.   It's not so much that, I've got the portables.

14      Q.   Okay. So that piece of evidence is not being  
15          treated as a piece of evidence at all, is it?

16      A.   It's still in the cruiser. I have not had it  
17          removed from the cruiser.

18      Q.   From your experience as a Police Officer since  
19          1973, were an attorney to try and reduce that  
20          radio as evidence at a hearing, would it be  
21          admitted?

22                   MR. TSCHOLL:       Objection. This is  
23          not a criminal matter.

24                   THE ARBITRATOR:   Sustained.

25                   MR. PIOTROWSKI:   I'll withdraw the

1 question.

2 Q. Was Cimperman tampering with City equipment by  
3 having Brinkley's reprogramming the  
4 Maxon-SM4150s?

5 A. Whatever they are, they're not City equipment  
6 so, no.

7 MR. PIOTROWSKI: I have no further  
8 questions. Thank you, Chief.

9 THE ARBITRATOR: How long is your  
10 Cross for the reporter?

11 MR. TSCHOLL: Very short.

12 THE ARBITRATOR: Okay. I mean  
13 Redirect.

14 REDIRECT EXAMINATION

15 BY MR. TSCHOLL:

16 Q. Mr. Cimperman was charged with untruthfulness  
17 for several incidents; is that correct, Chief?

18 A. Yes.

19 Q. Was Mr. Dusenberry ever charged with any type  
20 of untruthfulness?

21 A. No.

22 Q. Turn to page 35 of the documents.

23 A. (Witness complies.)

24 Q. Does this document indicate when Ms.  
25 Arrendondo's fine was paid?

1 A. The bottom date says, "7/28/00 payment  
2 received" in the amount of \$148 monthly,  
3 probation fee 150. And it gives a receipt  
4 number, so I would have to say that that was  
5 paid on 7/28/00.

6 Q. And when you recommended termination to Safety  
7 Director Mr. Popham, what was your  
8 understanding as to when Ms. Arrendondo's fine  
9 was paid by Mr. Cimperman?

10 A. After he was confronted by Wendy Jones.

11 MR. TSCHOLL: That's all I have.

12 THE ARBITRATOR: Any Recross?

13 RECROSS-EXAMINATION

14 BY MR. PIOTROWSKI:

15 Q. Chief, do you have evidence that the failure  
16 to pay the fine was an attempt to steal that  
17 money by Captain Cimperman?

18 A. No evidence. Gut feeling.

19 Q. Gut feeling?

20 A. Gut feeling. I'm a Police Officer.

21 Q. Has he stolen from any other citizens?

22 A. He may or may not. I don't have any evidence  
23 of that fact.

24 MR. PIOTROWSKI: No further  
25 questions.



1 THE ARBITRATOR: Let's take a quick  
2 break.

3 (A brief recess was had.)

4 MR. TSCHOLL: Mike, I'm going to  
5 state the stipulation and hopefully I'll get  
6 it right. If I don't, I'm sure you'll let me  
7 know. The parties have stipulated that the  
8 document marked Number 1 in the City's Exhibit  
9 is an Email from Mr. Cimperman to Brinkley  
10 Electronics.

11 MR. PIOTROWSKI: Hold up. The Emails  
12 are only 5 through 9.

13 THE ARBITRATOR: 5 through 9.

14 I understand the stipulation to be  
15 that these are Emails to and from Mr.  
16 Cimperman and Brinkley Electronics and they  
17 are what they are and they say what they say.

18 MR. TSCHOLL: Thank you.

19 THE ARBITRATOR: Is that  
20 satisfactory?

21 MR. TSCHOLL: That is  
22 satisfactory. I would like a stipulation on  
23 Items 1 through 4, that that was  
24 correspondence between Mr. Cimperman and  
25 Brinkley Electronics. Although, it wasn't an

1 Email, it was correspondence between Mr.  
2 Cimperman and Brinkley Electronics and it says  
3 what it says.

4 THE ARBITRATOR: Mr. Piotrowski?

5 MR. PIOTROWSKI: We don't know on  
6 Number 2.

7 MR. TSCHOLL: We don't know on  
8 Number 1, Number 3 and then Number 4.

9 MR. PIOTROWSKI: Okay. 1, 3 and 4 so  
10 stipulated.

11 THE ARBITRATOR: Go ahead and swear  
12 in the Witness.

13 WHEREUPON,

14 GREGORY POPHAM

15 who, being first duly sworn, testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. TSCHOLL:

19 Q. Mr. Popham, would you state your name for the  
20 record?

21 A. Gregg Popham.

22 Q. And are you employed?

23 A. Yes.

24 Q. By whom?

25 A. Safety Director for the City of New Philly.

- 1 Q. Any other employment?
- 2 A. I'm in the Conservancy District.
- 3 Q. And what do you do for the Conservancy
- 4 District?
- 5 A. I'm Assistant Safety Coordinator.
- 6 Q. Prior to that position, did you hold a
- 7 position with the City of New Philadelphia,
- 8 other than the Safety Director position?
- 9 A. Yes.
- 10 Q. And what position was that?
- 11 A. I was a Police Officer for 23 years.
- 12 Q. What years?
- 13 A. 1976 through 1996 and I started off before
- 14 that for the fire department for
- 15 two-and-a-half years.
- 16 Q. So your total service with the City is
- 17 approximately 23 years?
- 18 A. Twenty-five years.
- 19 Q. Twenty-five years?
- 20 A. Yes.
- 21 Q. And when did you become the Safety Director?
- 22 A. January 2000.
- 23 Q. And that would have been when Mayor Brodzinski
- 24 became the Mayor?
- 25 A. Yes.

1 Q. And briefly describe your duties as the Safety  
2 Director as you understand them.

3 A. To basically oversee the Police and Fire  
4 Departments administratively, sign off on  
5 requisitions and that type of thing.

6 Q. And, of course, during your 23 years with the  
7 Police Department, you are familiar with the  
8 Chief?

9 A. Yes.

10 Q. Are you also familiar with Mr. Cimperman?

11 A. Yes.

12 Q. So he would have been here prior to you  
13 retiring?

14 A. Yes. I think Dave started around 1994. I  
15 think somewhere around there.

16 Q. At some point in time, did you become involved  
17 in the matters and issues that led to Mr.  
18 Cimperman's termination?

19 A. On August 4th we had a meeting with Dave and  
20 the Chief and myself. We were going to place  
21 Dave on Administrative Leave pending an  
22 investigation.

23 Q. And prior to that -- strike that.

24 When did you first become aware that  
25 there was an issue with Mr. Cimperman?

1       A.     First of all, there had been -- I had heard  
2             there was a rumor that there was something to  
3             do with some radios. That there was an  
4             investigation that was going on and then I  
5             don't remember the date, but it would have  
6             been towards the end of July, Larry Hootman  
7             came up to me and made a statement that he --  
8             that Dave had supposedly had money from a  
9             person who he was supposed to post bond for  
10            and he didn't post the bond.

11       Q.     And did you take any action at that time?

12       A.     Basically, what I told him was that, you  
13             know, "Well, if you heard this, if you can get  
14             some documents put together and get it to the  
15             Chief, we can look into it."

16       Q.     And go ahead and tell us what happened after  
17             that regarding your involvement with the  
18             issues.

19       A.     Basically, after that, there was -- I believe  
20             there was a statement put together from a  
21             couple of the probation people at Muni Court.

22       Q.     I'm sorry. You're getting ahead of me.

23       A.     Okay.

24       Q.     I'm talking about between you talking with --  
25             is it "Hootman"?

1 A. Yes.

2 Q. And August the 4th, the date that you met with  
3 Mr. Cimperman.

4 A. Okay. Well, it was only a couple of days that  
5 had transpired, but we had discussed these  
6 issues with the Chief and, basically, we were  
7 waiting on statements to come in so we could  
8 review the statements that we got and --

9 Q. Well, who decided to meet with Mr. Cimperman  
10 on August the 4th?

11 A. I believe it would have been at the  
12 recommendation of the Chief.

13 Q. And tell me what you can recall about that  
14 conversation with the Chief.

15 A. Well, I think, basically, it was based on the  
16 information that we had received about the  
17 bond money. And there was an issue that was  
18 brought up about someone had called and was  
19 wanting to verify Dave's employment with the  
20 Police Department in reference to some radios  
21 or something.

22 Q. Okay. So then you had a meeting on August the  
23 4th of 2000?

24 A. Yes.

25 Q. And who was present at that meeting?

1 A. It was Dave, the Chief and myself.

2 Q. And to the best of your recollection, can you  
3 tell me what was said at that meeting by  
4 either yourself, the Chief or Mr. Cimperman?

5 A. I think it was probably like close to the  
6 afternoon shift, around that time, 2:00 or  
7 3:00. Dave come into the Chief's office and  
8 at which time the Chief gave Dave a letter on  
9 the Administrative Leave.

10 At that point Dave said, you  
11 know, "Basically, I don't have anything to say  
12 and if you have anything else to say, you can  
13 say it to my attorney." And then he laid down  
14 his card from an attorney out of Columbus.

15 Then I believe - I can't remember if  
16 it was the Chief or myself - brought up we  
17 wanted to explain, you know, what this looked  
18 like, you know, the reason for this  
19 Administrative Leave pending an investigation  
20 was that -- you know, just looking at this at  
21 face value, it looked like he had taken this  
22 money and put it in his account and then when  
23 he got caught, then, "Oh, I forgot." And was  
24 going to pay it back.

25 And the second was that we were

1           trying to explain, you know, it appeared from  
2           the note that the Chief had, that he was using  
3           his position as a Police Officer to gain  
4           privileges in Internet transactions and this  
5           type of thing.

6                       And, basically, what we were doing  
7           with the letter is telling him that it was  
8           going to be investigated.

9       Q.   Why don't we turn to that letter and it's on  
10           that Witness packet of page 13. Do you see  
11           that letter, Gregg?

12       A.   Yes.

13       Q.   Go ahead and identify it for the record.

14       A.   Okay. This is -- would be, I imagine, a copy  
15           of the letter that was given to Dave on  
16           August 4th and it was signed by me.

17       Q.   Do you know who typed this document?

18       A.   No, I can't remember.

19       Q.   Did you type it?

20       A.   No. Either Mary Jo or one of the clerks here  
21           or somebody. I don't know where it was  
22           generated.

23       Q.   Do you see that it says in there the last  
24           sentence of the first paragraph, "Also  
25           transactions involving Internet sale of radio



1 equipment will be looked at"?

2 A. Yes.

3 Q. Was that specifically discussed with Mr.  
4 Cimperman at this meeting between yourself and  
5 the Chief?

6 A. I think it was only brought up, I think, to  
7 the extent of what I just said, you know, it  
8 just appears that because of the note that the  
9 Chief had, that he was using his authority. I  
10 mean, I don't -- I can't remember that we went  
11 into any more detail than that.

12 Q. Did Mr. Cimperman have any response that you  
13 can recall?

14 A. Yes.

15 Q. What was the response?

16 A. Basically, he had said in no way had he ever  
17 used his authority as a Police Officer for  
18 anything over the Internet.

19 Q. And can you describe the tone and manner that  
20 he made that statement?

21 A. Yeah, it would have been -- he was like  
22 insisting it was, you know --

23 MR. PIOTROWSKI: Objection. "He was  
24 like insisting" is about like trying to  
25 suggest what he was thinking.

1 THE ARBITRATOR: Let him respond and  
2 I'll entertain a motion to strike.

3 A. I guess he was emphatic that, you know, he had  
4 never done this.

5 Q. You testified that at some point in time he  
6 took out a card from a lawyer and said, "If  
7 you have any more questions, to contact the  
8 lawyer"?

9 A. Yes.

10 Q. At what point in the meeting did that occur?

11 A. Just shortly after he had been given the  
12 letter.

13 Q. Did you think it was unusual that Mr.  
14 Cimperman at that point in time would have  
15 taken this card from his lawyer out and  
16 basically given to it you? Did you find  
17 anything unusual about that?

18 A. I was surprised that he did that.

19 Q. Why were you surprised?

20 A. I just felt that in knowing Dave, that there  
21 had been -- if there would have been -- if he  
22 would have had a response, if there would have  
23 been a reason for this, he would have told us.

24 Q. So in this meeting it's your testimony that  
25 Mr. Cimperman could have responded and

1           discussed these issues with you?

2       A.     Sure.

3       Q.     After this meeting, Gregg, what action, if  
4           any, did you take to investigate this matter?

5       A.     A couple -- well, right after that, I  
6           contacted BCI and they agreed to come in and  
7           do an investigation.

8       Q.     And what did you tell BCI that you wanted  
9           investigated?

10      A.     I don't even know if I was here. I think they  
11           came and they may have just talked to Tom and  
12           picked up some of the statements and stuff  
13           that had been already put together that the  
14           Chief had in his office.

15      Q.     Okay. So you had no direct communication or  
16           conversation at this point in time with  
17           anybody from BCI?

18      A.     I had to put in a request for the  
19           investigation. They told me they would be in  
20           to do it and when they actually came in then  
21           and the information that they were given, I  
22           couldn't say, because I probably would not  
23           have been here.

24      Q.     When you put in the request to BCI, is it a  
25           general request or a specific request or tell

1           us about this request.

2       A.    There was, I think, a short synopsis on -- the  
3           bond money was put as one of the reasons for  
4           the request.

5       Q.    So in the request, it's your belief that you  
6           only mentioned the bond money?

7       A.    I think.

8       Q.    Do you know how it was that they happened to  
9           investigate any other matter?

10      A.    Because when they come in then, it would have  
11           been items that the Chief had. It may have  
12           been mentioned in the request to BCI, I just  
13           don't remember.

14      Q.    Okay. Now, when was the next time that you  
15           had any involvement with this matter?

16      A.    There had probably been -- after BCI had done  
17           some investigation and they had received some  
18           copies of Emails and different things like  
19           this, I believe we had sat down and talked  
20           between the Chief and BCI and myself.

21      Q.    And tell me about the conversation that you  
22           had with the Chief -- strike that.

23                   Do you recall when you had this  
24           sit-down with the Chief?

25      A.    No.

1 Q. Then tell me what you recall discussing with  
2 the Chief regarding this investigation.

3 A. Basically we were reviewing the Emails and  
4 stuff that had been supplied to BCI.

5 Q. And what did you say to the Chief or what did  
6 he say to you regarding these Emails?

7 A. Well, according -- on the one Email it was  
8 like a definite that Dave had used -- at the  
9 bottom of the Email it said, "Dave Cimperman,  
10 Captain New Philly Police Department."

11 Q. Pages 5, 6, 7, 8 and 9 are the Emails. If you  
12 could review these documents and identify the  
13 particular Email that you were discussing with  
14 the Chief.

15 A. Number 7.

16 Q. Go ahead. What was your observation about  
17 this Email, Gregg?

18 A. Well, one of the things I believe that we  
19 discussed was, you know, whether or not that  
20 Dave had the authority to do that, you know,  
21 using being a Captain of the Police  
22 Department.

23 Q. Okay. Now, going back to the meeting that you  
24 had with Mr. Cimperman and the Chief on August  
25 the 4th. Did what you see here in this Email,

1           which is marked as Exhibit Number 7, conflict  
2           with your understanding of what was asked of  
3           Mr. Cimperman and what he told you on August  
4           the 4th?

5       A.    Yes.

6       Q.    And how did it conflict?

7       A.    Going back to the 4th, I mean, Dave said that  
8           he did not use the Police Department in any  
9           way for any transactions over the Internet and  
10          then here we have at the bottom it's, you  
11          know, "David F. Cimperman Junior, Captain New  
12          Philadelphia Police Department." So I would  
13          say if he's using his authority -- I mean, if  
14          nothing else, you know, there's a signature on  
15          the bottom of this.

16      Q.    Okay. So based upon your review of  
17          City Exhibit Number 7, was Mr. Cimperman  
18          truthful with you at the meeting on August the  
19          4th?

20      A.    No.

21      Q.    Okay. Did you review any other Emails with  
22          the Chief?

23      A.    I'm sure we looked at them, but this is the  
24          only one that I think was kind of -- jumped  
25          out at you.

1 Q. Turn to Number 10, Gregg.

2 A. (Witness complies.)

3 Q. Have you ever seen this document?

4 A. Not -- I think a couple weeks ago -- no, this  
5 was one from Brinkley. Yes, in going and  
6 reviewing the papers that BCI had received, it  
7 was in their packet.

8 Q. Did you discuss this document with the Chief  
9 at any time?

10 A. I don't think so, but I don't remember.

11 Q. Did you ever see the part which is at the  
12 very -- well, right after the information  
13 regarding who it was sold to, that next  
14 paragraph, the nature of the service, did you  
15 see that part of that paragraph that talked  
16 about verifying employment with MPPD on  
17 7/31 "thanks"?"

18 A. Which one is this?

19 Q. On 10. Right at the top. Had you seen this  
20 before?

21 A. No.

22 Q. Okay. Let's continue then. Your involvement  
23 in this matter after your meeting with the  
24 Chief, did you continue to have involvement  
25 with this matter?

1 A. Other than, basically, being just kept  
2 apprised of what was going on as far as the  
3 investigation and then led up to a hearing on  
4 the 31st, I believe, of August.

5 Q. And what's your recollection of what occurred  
6 at that hearing?

7 A. That Dave, his attorney, Mr. Hinig, and an FOP  
8 rep, the Chief and myself, went to the Elk's  
9 building.

10 Q. And what was the purpose of going to the Elk's  
11 building?

12 A. It was the only place we had available to have  
13 this hearing based on the Administrative Leave  
14 letter that Dave had been given.

15 Q. What was your understanding of the charges  
16 that were being alleged against Mr. Cimperman  
17 at this hearing or meeting?

18 A. First of all, for being dishonest, for  
19 tampering with equipment and, also, by that  
20 time there had been -- the report had gone to  
21 the County Prosecutor and that we had a letter  
22 from the Prosecutor, basically, saying that  
23 she would take this to the Grand Jury, but  
24 that was our decision to make on that.

25 Q. What was your understanding of the specifics



1 involved with the dishonesty charges that were  
2 the subject of the August 31, 2000 meeting?

3 A. Okay. That at that meeting they had -- at  
4 that point they could answer to the charge if  
5 they wanted to.

6 Q. I understand that. What was your  
7 understanding of what was involved in the  
8 dishonesty charge as being made against Mr.  
9 Cimperman at this time?

10 A. It was a serious charge.

11 Q. And what were the facts as you understood it  
12 at this time which supported those charges?

13 A. Based on the Emails from Brinkley Electronics  
14 and, you know, being in the room on  
15 August 4th, you know, when Dave made the  
16 statement that, you know, he in no way used  
17 his position on the Police Department to gain,  
18 you know, things over the Internet.

19 Q. Anything else regarding the dishonesty  
20 charges? Did the Arrendondo matter -- was  
21 that also part of the --

22 A. That was also part of it, but at that hearing,  
23 they made -- they offered no statement on  
24 anything.

25 Q. And when you say, "they offered no statement

1 on anything," what's your recollection of what  
2 was said by Mr. Cimperman and/or his  
3 representatives at this meeting?

4 A. I don't know if Dave said anything or not. I  
5 think he discussed back and forth with either  
6 his attorney or the FOP rep, if I remember  
7 correctly, I think you may have asked, you  
8 know, they could answer to these charges or  
9 make a statement on these and they declined to  
10 make any statement.

11 Q. Did they ask for any information from the  
12 City?

13 A. No, the only thing that I could remember that  
14 was brought up is they wanted to know what  
15 kind of a severance pack --

16 MR. PIOTROWSKI: Objection. At this  
17 point we seem to be discussing settlement  
18 offers.

19 THE ARBITRATOR: I think this  
20 information is whether or not any statements  
21 were made with respect to the charges.

22 A. There was no statements made in regards to the  
23 charges.

24 Q. And, again, I want to be very clear on this.  
25 Did they request any specific information

1 about the charges?

2 A. No, not that I remember. It was a relatively  
3 short meeting.

4 THE ARBITRATOR: What was the date of  
5 this meeting?

6 MR. TSCHOLL: August 31st.

7 THE ARBITRATOR: Thanks.

8 Q. And after that meeting, Gregg, did you have  
9 any other involvement?

10 A. Like I say, just other than any updates or  
11 anything that might happen to come along in  
12 regards to this, but in specifics, I don't  
13 remember anything.

14 Q. Are there any other issues pending right now  
15 regarding Dave Cimperman's honesty or  
16 truthfulness --

17 MR. PIOTROWSKI: Objection.

18 THE ARBITRATOR: Let him finish the  
19 question, please. Go ahead.

20 Q. -- that you became aware of after August 31,  
21 2000?

22 MR. PIOTROWSKI: Objection. How can  
23 it possibly play a role in determining whether  
24 or not to terminate Captain Cimperman on  
25 August 31, 2000?

1 THE ARBITRATOR: I'm inclined to  
2 agree.

3 MR. TSCHOLL: Well, and, again, I  
4 represent to you that there is arbitral  
5 authority for postdischarge -- other  
6 postdischarge misconduct even if it's not part  
7 of the original charges to be used in a case.

8 Again, that's for you to decide and I  
9 will cite the authority to you, but at least  
10 I'd like to get it into the record and if you  
11 decide you don't want to hear it, that's  
12 fine. Obviously, that's going to be your  
13 call, but I believe there is authority for it  
14 and I would, at least, like to get it in the  
15 record.

16 MR. PIOTROWSKI: The allegations he's  
17 wanting to bring is an allegation of a felony  
18 violation of the law, I believe. He's never  
19 been tried. Never been charged. Has not been  
20 the subject to any litigation and is nothing  
21 more than an unsupported allegation at this  
22 time.

23 THE ARBITRATOR: Well, I will  
24 entertain a motion to strike both here as well  
25 as you might discuss addressing in your

1           respective briefs, if I don't sustain your  
2           objection or motion to withdraw that  
3           evidence.

4                     You may proceed.

5                     MR. TSCHOLL:        Thank you.

6           BY MR. TSCHOLL:

7   Q.    Gregg --

8                     MR. TSCHOLL:        What City Exhibit  
9           are we up to?

10                    THE ARBITRATOR:   We're up to E.

11                    MR. TSCHOLL:        City Exhibit E?

12                    THE ARBITRATOR:   Go off the record.

13                    (Discussion held off record.)

14                    (City's Exhibit F was

15                    marked for identification.)

16           BY MR. TSCHOLL:

17   Q.    Are you aware of any other instances  
18           subsequent to the termination of Mr. Cimperman  
19           involving conduct involving his truthfulness  
20           that occurred while he was a Police Officer?

21   A.    Yes.

22   Q.    And would you describe those for the  
23           Arbitrator, please.

24   A.    Okay.   There was an article --

25                    MR. PIOTROWSKI:   Objection.

1 THE ARBITRATOR: Go ahead and answer  
2 the question.

3 A. There was an article in the local newspaper,  
4 the Times Reporter, and it's dated April 24,  
5 2001. And it's alleging perjury claims in a  
6 case dismissed.

7 Q. Perjury against whom?

8 A. Mr. Cimperman.

9 Q. And do you know what are the specifics of this  
10 new perjury charge?

11 A. I don't really know the particulars on this.  
12 I did talk to the Prosecutor and the only  
13 thing that she would tell me is that she was  
14 ordering the transcript of the trial and was  
15 considering taking this case, also, to the  
16 Grand Jury.

17 Q. Okay. Gregg, would you turn in the Witness  
18 packet to Number 41. And there's a series of  
19 color photographs from 41 to 54. Do you see  
20 these?

21 A. Yes.

22 Q. Can you identify these documents?

23 A. These are copies that were printed off of  
24 TuscoNet.

25 Q. What is "TuscoNet"?

1 A. It's a local Internet provider for the area.

2 Q. And how did you become aware of these?

3 A. I had a friend of mine, Rick Wells, put these  
4 on a floppy and gave them to me.

5 Q. Now, looking at these pictures here, is there  
6 anything in these Exhibits 45 through 54 that  
7 conflicts with anything that Dave Cimperman  
8 told you at the August 4, 2000 meeting?

9 A. Once again, that he never used his position to  
10 do anything over the Internet. It doesn't say  
11 anything. It just has his picture in a  
12 uniform.

13 Q. Okay. And that's a uniform of a New  
14 Philadelphia Police Officer; is that correct?

15 A. Yes.

16 Q. And, again, going back to the August 4th  
17 meeting, he told you he never used his  
18 position as a City --

19 MR. PIOTROWSKI: Objection.

20 THE ARBITRATOR: Let him finish.

21 Q. As a City of New Philadelphia Police Officer  
22 involving Internet transactions, is that what  
23 he told you?

24 A. Right.

25 Q. And City Exhibits 41 through 54, how does

1           that -- does that jive with what he told you  
2           on August the 4th?

3       A.    No, it doesn't.

4       Q.    Why not?

5       A.    Like I say, it doesn't say anything, but right  
6           here's a picture of a New Philadelphia Police  
7           Officer and behind it are his radio equipment  
8           that's for sale.

9       Q.    So was Mr. Cimperman being honest with you on  
10           August the 4th when he told you he never used  
11           his position as a Police Officer for Internet  
12           sales or transactions?

13      A.    He's not being honest.

14      Q.    Is it important for -- you were a Police  
15           Officer for 23 years, Gregg?

16      A.    Yes.

17      Q.    And now you're the Safety Director?

18      A.    (Witness nodded head up and down.)

19      Q.    Is it important for police officers to be  
20           honest in general?

21      A.    Yes.

22      Q.    And why is honesty important for police  
23           officers?

24      A.    Because, basically, your whole job revolves  
25           around you being honest.



1 Q. And if you're not honest, could that affect  
2 your relationship with other police officers  
3 in your department?

4 A. Right, and you would have basically no  
5 credibility.

6 Q. Could that affect your relationship with the  
7 public at large?

8 A. Yes.

9 Q. Could that affect your relationship with the  
10 prosecutors either in Municipal Court or  
11 Common Pleas Court that you work with?

12 A. Yes.

13 Q. And would that be a positive effect or a  
14 negative effect to those relationships?

15 A. It would be a definite negative effect.

16 Q. And why would it be a negative effect?

17 A. Again, your role as a Police Officer is for  
18 truthful testimony, reports and all this kind  
19 of thing. Once there would be doubting any  
20 credibility, then that would be -- I mean,  
21 everything would be subject to attack.

22 Q. And you're the Safety Director. Did you make  
23 this ultimate decision to terminate Mr.  
24 Cimperman?

25 A. Yes.

1 Q. Now, is truthfulness of a Police Officer  
2 something that you think you would give  
3 progressive discipline to to tell a Police  
4 Officer, "Look, you've got to be honest"? Is  
5 it a proper -- strike that.

6 Is progressive discipline proper in  
7 cases where police officers are not truthful  
8 or lies?

9 A. No, I think it's a severe violation.

10 Q. And it is something that you believe -- or do  
11 you believe that on a first offense a Police  
12 Officer would be subject to termination?

13 A. Yes, it not only affects that Police Officer,  
14 it affects the whole department.

15 Q. And how would it affect the whole department?

16 A. Basically, if something like that is not dealt  
17 with sternly, then it goes back to, you know,  
18 we take care of our own. You know, we cover  
19 up. We make light of things. So lying would  
20 be definitely severe.

21 Q. Is there any question in your mind that Mr.  
22 Cimperman either lied or misrepresented to you  
23 and the Chief at your August 4, 2000 meeting  
24 about his use of his position as a City of New  
25 Philadelphia Police Officer for his Internet

1 sales or transactions?

2 A. Yes.

3 Q. There is doubt?

4 A. He lied. There's no doubt based on the  
5 information that we have.

6 Q. Is there any question in your mind as to  
7 whether or not Mr. Cimperman was dishonest in  
8 the way that he handled the Lola Arrendondo  
9 payment of fees matter?

10 A. From what I know of it, yes, he was.

11 Q. He was what?

12 A. Dishonest.

13 Q. And what facts do you have to support your  
14 conclusion that he was dishonest?

15 A. The facts were basically -- was the  
16 information that was received from the court.  
17 That a statement that Dave made to Wendy  
18 Jones. That he had the money and placed it in  
19 his account and had not paid the bond for this  
20 lady.

21 Q. And do you know when he received the check  
22 from Ms. Arrendondo?

23 A. No, I don't.

24 Q. Let me hand you what's been marked as -- I  
25 believe we finally figured it out to be --

1 THE ARBITRATOR: Joint D.

2 Q. -- Joint D. Does that indicate when that  
3 check was sent?

4 A. It indicates probably the --

5 Q. I mean, the date it was written?

6 A. June 22, 2000.

7 Q. Do you have the packet in front of you? Do  
8 you know when Ms. Jones had her conversation  
9 with Mr. Cimperman?

10 A. It probably would have been the end of July.

11 Q. And do you know when Mr. Cimperman finally  
12 paid the Arrendondo fines?

13 A. A few days or a day or two after Wendy Jones  
14 had talked to Dave about it.

15 Q. Is there anything else that you would like to  
16 testify to as a decision maker in this case,  
17 Gregg, about your reasons for terminating Mr.  
18 Cimperman?

19 A. Basically, you know, I was the person that  
20 signed the letter for termination, but it  
21 wasn't based solely on my decision alone. It  
22 was based on the County Prosecutor, the Law  
23 Director, the Chief and yourself.

24 Q. Turn to Document Number 40.

25 A. (Witness complies.)

1 Q. Can you identify this document?

2 A. Yes, it is the copy of the letter then that  
3 was delivered and signed by me and delivered  
4 later to Dave referencing his termination.

5 Q. And is this the letter which you wrote which  
6 effectively terminated Mr. Cimperman?

7 A. Yes.

8 MR. TSCHOLL: I have no further  
9 questions.

10 THE ARBITRATOR: Cross?

11 CROSS-EXAMINATION

12 BY MR. PIOTROWSKI:

13 Q. On page 40, your letter to Dave Cimperman,  
14 that describes the reasons you terminated him,  
15 right?

16 A. Based on the information that I had, yes.

17 Q. In the first paragraph, what does the final  
18 sentence say?

19 A. Basically, that he was notified on August 4,  
20 2000 that an investigation, including the  
21 Internet sales of radio equipment, and your  
22 tampering with City property, i.e., the City  
23 communications system.

24 Q. Okay. None of that refers to the Brinkley  
25 issue, does it?

1 A. No.

2 Q. Now, when you referred back on August 31st to  
3 the August 4th meeting, you talked about it  
4 including the Internet sale of radio  
5 equipment, right?

6 A. Yes.

7 Q. Is that the question that the Chief asked  
8 Captain Cimperman? Did he ever use his  
9 position as a New Philadelphia Police Officer  
10 in the Internet sale of radio equipment?

11 A. I mean, it was close to that.

12 Q. Did it include "Internet"?

13 A. Yes.

14 Q. Did it include "sales"?

15 A. I'm not sure.

16 Q. Did it include "radio equipment"?

17 A. Yes.

18 Q. Okay. So it may have included "sales of radio  
19 equipment"?

20 A. Or --- I'm not 100 percent sure.

21 Either "transactions" or "the Internet," or  
22 "Internet sales." I don't recall.

23 Q. Okay. Now, at that point on August 4th, you  
24 were extremely concerned about this allegation  
25 that Captain Cimperman had defrauded somebody

1 over Ebay, right? That he had sold something  
2 to somebody. They had paid for it and he  
3 hadn't sent the item that had been paid for?

4 A. It was an issue that had been brought up  
5 earlier.

6 Q. And it hadn't been rejected or it had been  
7 rejected?

8 A. I think it had been taken care of.

9 Q. Okay. On August 5th you had the Chief prepare  
10 a letter, Document 14 -- I'm sorry. August  
11 7th, you had the Chief prepare a letter and it  
12 states in that letter that the Safety Director  
13 is requesting an independent agency to  
14 investigate this matter and also a possible  
15 Internet fraud where Cimperman supposedly sold  
16 something over the Internet and then failed to  
17 send the sold item?

18 A. Right.

19 Q. Okay. Did you know this letter was going out?

20 A. Yes.

21 Q. And you knew it was going out on August 7th,  
22 the day it went out?

23 A. No. No. No. I didn't know exactly when it  
24 was going to go out, but I knew it was going  
25 to go out.

1 Q. Okay. This is the request to BCI to begin an  
2 investigation of the Internet fraud, right?

3 A. Um-hum.

4 Q. Okay. Now, if it was no longer an issue on  
5 August the 4th, why would you have them  
6 investigate it?

7 A. Because it may have developed into a pattern  
8 for a reason of the money being kept by Dave.

9 Q. So you were telling BCI to investigate  
10 something that your prior testimony just said  
11 that you thought it had been cleared up?

12 A. Dave had taken care of the problem.

13 Q. Had Dave taken care of the problem before the  
14 guy even complained?

15 A. Not that I know of.

16 Q. If you knew that he, in fact, sent out that  
17 item prior to the individual even calling the  
18 Police Department to even complain about him,  
19 would that have removed that concern from your  
20 mind?

21 A. The reason that it was a concern was because  
22 the individual called the Police Department.  
23 If that would have never happened, then it  
24 wouldn't have been a concern.

25 Q. But once he called, it became a concern?



1 A. Right, but then I do know then that it was --  
2 you know, when Dave sent the material out to  
3 the individual, I don't know that.

4 Q. Is that important?

5 A. Well, yes.

6 Q. Why?

7 A. Because, once again, he was notified and then  
8 Dave took care of it.

9 Q. Well, who did the investigation about the  
10 Internet fraud?

11 A. BCI.

12 Q. Who did the first investigation about the  
13 Internet fraud?

14 A. I don't remember.

15 Q. Well, you told him to. Does that help you  
16 remember?

17 A. I told Larry Hootman to look into the bond  
18 money.

19 Q. Just the bond money?

20 A. Um-hum.

21 Q. So if Larry Hootman also did a full  
22 investigation of this Internet fraud thing, he  
23 was exceeding your instructions?

24 A. He was looking into matters that I hadn't  
25 brought up, yeah.

1 Q. And would that be exceeding the authorization  
2 you had given him?

3 A. I guess technically, yes.

4 Q. Well, is it "technically," yes, or "clearly"  
5 yes?

6 A. Yes.

7 Q. You told him to investigate whether  
8 Arrendondo's fines had been paid and he  
9 decided to go out on a flyer to discuss this  
10 Internet fraud thing?

11 MR. TSCHOLL: Objection.

12 MR. PIOTROWSKI: I'll withdraw the  
13 question.

14 Q. Did you ever discipline Larry Hootman for  
15 exceeding your instructions?

16 A. No, because I didn't feel that he did.

17 Q. You didn't feel that doing the Internet fraud  
18 investigation exceeded your instructions?

19 A. I think that it was a concern of his and he  
20 brought it to the attention of the Chief.

21 Q. Do you have a personal friendship with Larry  
22 Hootman?

23 A. No, just another Officer.

24 Q. So when just any old Officer comes to you and  
25 asks you to do an investigation of his

1 supervisor, you authorize it?

2 A. When he brought it up what he had heard, what  
3 I told him to do and being in this Department,  
4 there's -- you can't walk in here on a day  
5 without somebody coming up and telling you, "I  
6 heard this or I heard that," so a way of  
7 squelching a lot of the so called "BS" that  
8 goes on, when this happens -- in turn what I  
9 would do is, I would tell that person, "You  
10 put it in writing and get it to the Chief and  
11 then it will be looked at." And that's  
12 basically what happened with the Larry Hootman  
13 deal.

14 Q. So Hootman came to you and complained what?

15 A. Yeah, he told me that he had heard that Dave  
16 had put bond money in his account and had not  
17 paid the bond.

18 Q. Okay. How many days were there between the  
19 time Wendy Jones talked to Dave Cimperman  
20 about the fine money and the fine money  
21 actually being paid?

22 A. I think it was only like a day or two.

23 Q. Could it have been hours?

24 A. It could have been.

25 Q. Less than a day?

1 A. I don't know. I mean --

2 Q. Does it make any difference?

3 A. No, he paid it.

4 Q. Okay. But you're still calling him dishonest  
5 for forgetting to pay it?

6 A. That's kind of like when you catch somebody  
7 stealing something and then they say, "Oh, you  
8 caught me, so I'll give it back."

9 Q. But who was the check made out to?

10 A. I don't know. We didn't have a clue. Nobody  
11 said anything.

12 Q. Okay. So you reached your conclusion without  
13 any fair investigation?

14 A. Based on the information that we had and at  
15 that point, BCI did not have the copy of the  
16 check.

17 Q. Okay. Did you ever ask Dave Cimperman these  
18 questions?

19 A. First of all, he told us if we had any more  
20 questions to talk to the attorney. Then after  
21 the 31st hearing, you know, it was like I  
22 said, when we wanted to get some information  
23 on this, no information was offered up. So  
24 that's when we had to make our decision based  
25 on the information that we had.

1 Q. Okay. So you approached Dave Cimperman on the  
2 4th of August and said, "We think you did the  
3 following things and we're putting you on  
4 Administrative Leave without pay as of now"?

5 A. It wasn't without pay.

6 Q. I'm sorry. With pay, as of now?

7 A. Pending and investigation.

8 Q. Okay. And even though you had the power to  
9 order him to answer your questions, you didn't  
10 do it, why not?

11 A. At that point because we wanted an  
12 investigation to take place.

13 Q. Investigation by whom?

14 A. BCI.

15 Q. Okay. And so three days later you had the  
16 Chief contact BCI and give them a list of the  
17 things you wanted investigated?

18 A. Yes.

19 Q. And that list included two things, right?

20 A. Yes, the bond money and the radios.

21 Q. Well, it's the Internet fraud, isn't it?

22 A. That was -- there were three things.

23 Q. Where is the third on this letter?

24 A. No, that's it. The second. Only two.

25 Q. Internet fraud?

1 A. Yep.

2 Q. And the bond money?

3 A. Yes.

4 Q. Okay. When the Chief asked his question, you  
5 already testified you're not sure if he  
6 said "Internet radio sales" or some other  
7 combination?

8 A. Internet sales, Internet phone transactions,  
9 Internet radio transactions, something to that  
10 effect.

11 Q. Now, what were the exact words, if you recall,  
12 Dave Cimperman used in response?

13 A. To the best of my knowledge and recollection,  
14 it was that, "I have never used my position on  
15 the Police Department to do anything over the  
16 Internet."

17 Q. Could it have been "No, never"?  
18 Emphatically "No, never"?

19 A. And then he could have said that and then on  
20 to that, he's never used it over the Internet.

21 Q. Did you then show him the Brinkley stuff and  
22 say --

23 A. No.

24 Q. I guess you didn't clarify whether or not what  
25 his answer meant, did you? Were you trying to

1 catch him in a perjury trap or --

2 A. No. What we were trying to do when we gave  
3 him the letter is we wanted him, and I think  
4 the Chief wanted him, to understand this is  
5 why he was going on Administrative Leave,  
6 because when you look at these things just at  
7 face value, it's very serious.

8 Q. Okay. So in the letter, which is Document 13,  
9 this is his notice of inquiry regarding the  
10 Lola Arrendondo incident, that would be the  
11 bond issue and the transactions involving  
12 Internet sale of radio equipment?

13 A. Yes.

14 Q. Now, was that extra tag-on there, "Also  
15 transactions involving Internet sale of radio  
16 equipment," was that as a result of Hootman's  
17 investigation about the alleged fraud where  
18 Dave Cimperman had not sent something that he  
19 had sold over the Internet?

20 A. No.

21 Q. That was not?

22 A. No.

23 Q. So why then would that be what you  
24 requested --

25 A. It was based on a note that the Chief had that

1           was left about someone inquiring about Dave  
2           being a Police Officer.

3       Q.    So you knew about Brinkley Electronics then?

4       A.    No, only that there was a note from somebody  
5           that was --

6       Q.    Okay. Did you ask Dave why then did these  
7           people call?

8       A.    Like I said, he threw this card down for an  
9           attorney and said, "If you have anything else  
10          to say, tell it to my attorney."

11      Q.    But you knew that that didn't mean anything.  
12           You could order him to answer questions,  
13           couldn't you?

14                   MR. TSCHOLL:       Objection. Asked  
15           and answered.

16                   THE ARBITRATOR:   You can answer.  
17           Go ahead.

18      Q.    What was your answer?

19      A.    I said at that point what we were doing, once  
20           again, was explaining how this looked on the  
21           surface and that he was going to be placed on  
22           Administrative Leave.

23      Q.    And you didn't care whether or not his side of  
24           the story got out?

25      A.    After he developed this attitude and throws



1 his attorney paper down, at that point, no.

2 Q. Okay. So at that point it didn't matter  
3 whether or not there was clear evidence out  
4 there that showed that the accusations against  
5 him were untrue. It didn't matter at all. He  
6 had taken a position that he had to talk to  
7 his lawyer so he should be fired, right?

8 A. That didn't come until the 31st.

9 Q. Then you decided to fire him?

10 A. Yes.

11 Q. And what proof did you have then that he had  
12 decided to steal this money from Lola  
13 Arrendondo?

14 A. I didn't say that that was part of it.

15 Q. That's not part of your decision to terminate?

16 A. That's part of it, but also there's a charge  
17 that's sitting over in the Grand Jury.

18 Q. And we'll address those piece by piece.

19 What evidence did you have that he  
20 had made the determination to steal Lola  
21 Arrendondo's money?

22 A. At that point there was none.

23 Q. No evidence?

24 A. Other than it had happened and that he had it  
25 in his account.

1 Q. And that he had paid it to the court?

2 A. And he did pay it back.

3 Q. Okay.

4 A. After he got caught.

5 Q. And what evidence did you have that he made  
6 Internet sales of radios using his position as  
7 a Law Enforcement Officer?

8 A. Other than the Email --

9 Q. From Brinkley Electronics?

10 A. Yes.

11 Q. Now, if he had never sold the radios involved  
12 from Brinkley Electronics, does that mean it  
13 wasn't an Internet radio sale?

14 A. I don't have any idea.

15 Q. Well, if it doesn't involve a sale and you ask  
16 him about a sale, that doesn't apply, does  
17 it?

18 MR. TSCHOLL: Objection. That's  
19 not what the testimony was.

20 THE ARBITRATOR: Overruled.

21 Go head. You can answer.

22 A. Ask me again, please.

23 Q. If you ask him about a sale and an incident  
24 does not involve the sale of a radio or  
25 Internet sale of a radio, then the answer to

1           the nonsale question is not necessarily going  
2           to apply to the sale question, is it?

3       A.     Right, but he made no offer of any answer.

4       Q.     Okay. So he could have been answering that  
5           question honestly if it was about radio sales  
6           and he never sold those radios, right?

7       A.     Right.

8       Q.     Okay. Now, I believe you testified that, in  
9           part, you considered the termination to the  
10          Prosecutor that there might be charges  
11          brought --

12      A.     Yes.

13      Q.     -- in deciding to terminate Captain Cimperman?

14      A.     Yes.

15      Q.     Those charges have never been brought, have  
16          they?

17      A.     Not yet.

18      Q.     And it's now ten months later; is that true?

19      A.     Yes.

20      Q.     And they still haven't been brought?

21      A.     They were scheduled for Grand Jury the latter  
22          part of May, but they postponed them when this  
23          incident happened.

24                   THE ARBITRATOR:   Referencing City F?

25                   THE WITNESS:       Yes.

1 Q. And I guess I'm confused, Mr. Popham, does the  
2 office of the Prosecuting Attorney consult  
3 with you prior to bringing charges to the  
4 Grand Jury?

5 A. In this case, in the original letter, she left  
6 it up to the discretion of the City as to  
7 whether we wanted to proceed with this or not.

8 Q. And what did the City say?

9 A. "Proceed with it."

10 Q. And have charges been brought?

11 A. It was scheduled for Grand Jury the latter  
12 part of May.

13 Q. So, basically, your answer is, no, charges  
14 have not been brought?

15 A. Not yet.

16 Q. Turning to page 41. It's a printout of a  
17 digital picture; is it not?

18 A. Yep.

19 Q. Who is it sent to?

20 A. Who was it sent to?

21 Q. Yeah.

22 A. Rick Wells pulled this up on the computer. It  
23 wasn't sent to anybody.

24 Q. At whose request?

25 A. Mine.

1 Q. Your -- I'm confused, Mr. Popham. Rick Wells  
2 is a computer guy?

3 A. He's a State Trooper.

4 Q. Okay. And he was able to pull this off the  
5 Internet?

6 A. Yes, off TuscoNet.

7 Q. And TuscoNet is a for-profit commercial firm?

8 A. In the area here, yes.

9 Q. Okay. So this isn't some kind of official web  
10 site or anything like that?

11 A. The only thing I can tell you is that it's  
12 listed under the heading -- it's listed under  
13 Dave at TuscoNet and when you put that into  
14 the computer, this is what popped up.

15 Q. Is this what popped up or was it a list that  
16 popped up?

17 A. This is what popped up.

18 Q. All these photos on a web page?

19 A. This is what he gave -- he pulled it up on a  
20 computer. I didn't see it on the computer.  
21 He pulled it up and put it on the disk and  
22 gave me the disk and then I gave the disk to  
23 BCI.

24 Q. Okay. And you testified that you don't know  
25 anybody who ever got this photograph here. It

1           was never sent to anybody that you know of?

2       A.     No, I just told you that.

3       Q.     Right. Was it ever accessed by anybody?

4       A.     I don't have a clue.

5       Q.     And the remainder of these photographs, do any  
6           of them have for-sale signs on them?

7       A.     Nope.

8       Q.     Do you know why he would have photographs of  
9           these items?

10      A.     I can only assume.

11      Q.     But you have no evidence as to why they exist?

12      A.     No.

13      Q.     And do you know if they were ever sent to  
14           anybody?

15      A.     I don't have a clue.

16      Q.     Okay. Do you know if they were ever accessed  
17           by anyone?

18      A.     I wouldn't know.

19      Q.     Okay. Is there a Dave Cimperman web page  
20           that's got his name and picture on it or  
21           something like that?

22      A.     I don't know. At one time there probably was.

23      Q.     Now, when you found out that these radios had  
24           been modified, did you demand that the Chief  
25           take them all out of service immediately?

1 A. No.

2 Q. Were they a danger to the officers using them?

3 A. The portable I felt was a danger, yes.

4 Q. What about the car radio, wasn't it also a  
5 danger?

6 A. Only if it would have been used - from what I  
7 understood - as to its modification, that it  
8 would have been.

9 Q. Did you know if anybody else knew about that  
10 modification and was using it?

11 A. Not that I know of.

12 Q. Did you have the Chief post an order saying  
13 that that modification was not to be used  
14 because it was dangerous?

15 A. No.

16 Q. You agreed with him in keeping it a secret and  
17 hoping that nobody found out about it?

18 A. I didn't know.

19 Q. You didn't know?

20 A. No.

21 Q. Okay. Did anybody tell you that Dave  
22 Cimperman had carried a portable from May  
23 until termination that had a scan function on  
24 it?

25 A. No.

1 Q. Did you feel somebody should -- knowing that  
2 now, if I told you that now, do you think  
3 that's some kind of information that you  
4 should have known?

5 A. Knowing what I know now, I think there should  
6 be a policy in place that you don't carry a  
7 personal radio with you.

8 Q. But do you think it would be clear to anybody  
9 involved in this investigation that you did  
10 not want any officer carrying any portable  
11 that had a scan function?

12 A. That had been modified.

13 Q. Had a modified scan function. Let's change  
14 the question.

15 Do you think that it would have been  
16 clear to any officer doing this investigation,  
17 that any other officer who had the radio that  
18 had been modified in its scanner function,  
19 should have had that radio removed and  
20 replaced with a standard radio immediately?

21 A. If it would have been done by Dave, yes,  
22 should have happened.

23 Q. If the modification had been done by Dave?

24 A. Right.

25 Q. What if the modification had been done by some



1           guy named Alan from Columbus?

2       A.    He wouldn't have had the authority or right to  
3           do it.

4       Q.    So it still means, even if Alan did it, you  
5           still have to --

6       A.    Only the authorized dealer that we --

7       Q.    Staley's?

8       A.    Yes.

9       Q.    So any modified radio, other than one modified  
10           by Staley's, needed to be removed from service  
11           immediately because --

12      A.    Yes.

13      Q.    And any officer who didn't take that action  
14           should be disciplined?

15      A.    Yes.

16      Q.    Are you aware that the Chief left the portable  
17           in Officer Cimperman's gun belt from May, when  
18           it was discovered, until August 4th?

19      A.    He left it in his gun belt?

20      Q.    Well, he was still carrying one with the scan  
21           function and his Lieutenant was aware of it?

22      A.    I wasn't aware of that.

23      Q.    Okay. And why isn't the car radio a problem?  
24           It has a scan function, too.

25      A.    I'm not a radio tech, so I can't get into

1           that. I don't have a clue.

2       Q.    But you understood the car not to be the same  
3           problem as the portable was?

4       A.    As long as you're not using the modification.  
5            I think if you were using the modification,  
6            from what I understand -- like I said, I'm not  
7            a radio person at all. And from what I  
8            understood, that if you were using the  
9            modification, then what it did is it took the  
10           priority part out of the radio that would not  
11           allow, like New Philly traffic to override and  
12           kick in.

13      Q.    Do you know that your radios do have a scan  
14            function as normally programmed, the standard  
15            program?

16      A.    Philly and Dover?

17      Q.    Right. And if you're talking to Dover about a  
18            towed car and somebody calls for help, you're  
19            not going to hear that call, right?

20      A.    I think there's a priority override, but like  
21            I said, you're talking to me about something I  
22            don't have a clue.

23      Q.    Okay. Now, do you know the truth of any of  
24            the accusations contained in City Exhibit F?

25      A.    No, like I said --

1 Q. Only what you read in the newspaper article?

2 A. It's an allegation.

3 MR. PIOTROWSKI: I have no further  
4 questions..

5 THE ARBITRATOR: Any Redirect?

6 MR. TSCHOLL: The City rests  
7 subject to the admission of the exhibits.

8 MR. PIOTROWSKI: I'm going to move  
9 that we strike City F from the record. There  
10 has been no factual basis for its admission.

11 The mere fact that he described it as  
12 an article out of the local newspaper --

13 THE ARBITRATOR: Do you want to  
14 respond?

15 MR. TSCHOLL: Yeah, I think,  
16 number one, it is admissible because it does  
17 explain, at least in part, why charges have  
18 not been filed against Mr. Cimperman to date.  
19 And I'm sure that Mr. Piotrowski plans on  
20 making a big deal of the fact that no criminal  
21 charges have been filed and, therefore, is  
22 probably going to argue that there is some  
23 type of collusion between the Prosecutor and  
24 the City regarding the Cimperman thing.

25 This explains why no charges have

1           been filed and secondly --

2           THE ARBITRATOR: Well, let me tell  
3           you what I'm inclined to rule, there has been,  
4           since the first day of hearings, some  
5           discussions about the charges not being filed  
6           and being delayed and this hanging over his  
7           head. And the only valid testimony that  
8           relates to this - because he has no personal  
9           knowledge of anything contained in it - was  
10          the cancelation of the Grand Jury hearing  
11          scheduled for late May.

12                 I was inclined to admit this for that  
13          limited purpose only, but quite frankly, since  
14          he's given me that testimony, I don't really  
15          think that I would need this document.

16                 I would like to hear from you on  
17          this.

18                 MR. TSCHOLL:         It does go to that  
19          there's another allegation about being  
20          untruthful.

21                 THE ARBITRATOR: I'm not going to  
22          admit it for that purpose. I'll assure you of  
23          that, but I would admit it for the limited  
24          purpose that I mentioned.

25                 I don't know that you even need that

1 with the direct testimony of your witness in  
2 that regard.

3 MR. TSCHOLL: I do not if that's  
4 for that limited purpose.

5 THE ARBITRATOR: The objection will  
6 be sustained. Let's go through --

7 MR. TSCHOLL: Can we take a  
8 break? I need to get a drink of water.

9 THE ARBITRATOR: Yes.

10 (A brief recess was had.)

11 THE ARBITRATOR: The City has rested  
12 subject to the admission of the exhibits. The  
13 Joint Exhibits A, B and D being joint  
14 exhibits, of course, will be admitted.

15 City C, consisting of 92 pages, is  
16 admitted without objection. We've already  
17 ruled on City F, that has been rejected. Mr.  
18 Tscholl, I think we have all your exhibits?

19 MR. TSCHOLL: Yes, with that the  
20 City rests. Ready to go forward?

21 (Thereupon, Joint Exhibits A, B and D and  
22 City Exhibit C were admitted into evidence.)  
23 WHEREUPON,

24 BRETT MICHAEL BELKNAP

25 who, being first duly sworn, testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. PIOTROWSKI:

4 Q. Would you identify yourself for the record?

5 A. My name is Brett Michael Belknap.

6 Q. Could you spell your last name for us?

7 A. B-e-l-k-n-a-p.

8 Q. And how are you employed?

9 A. I work full-time at Bag-N-Save and I'm a  
10 part-time Police Officer for the Village of  
11 Roswell and I'm also a Reserve at  
12 Newcomerstown Police Department.

13 THE ARBITRATOR: Part-time at where?

14 THE WITNESS: Excuse me?

15 THE ARBITRATOR: Part-time at?

16 THE WITNESS: The Village at  
17 Roswell Police Department and I'm a Reserve at  
18 Newcomerstown.

19 BY MR. PIOTROWSKI:

20 Q. As a Reserve, are you paid?

21 A. No.

22 Q. In your day on the grievance regarding the  
23 termination of Captain Dave Cimperman of the  
24 New Philadelphia Police Department, were you  
25 aware of Captain Cimperman prior to his

1           termination?

2       A.     Yes.

3       Q.     And how did you know Captain Cimperman?

4       A.     I met him at his previous business, the pager  
5           store.

6       Q.     Did you have cause to discuss police issues  
7           with him at any time?

8       A.     Yeah, we talked. He helped me out with  
9           stuff. We just talked. I met him when I  
10          first graduated from the Academy.

11      Q.     At any point did Captain Cimperman assist you  
12           in obtaining radios for vehicles in  
13          Newcomerstown or Roswell vehicles?

14      A.     Yes.

15      Q.     How so?

16      A.     He had the radios and I had been talking to  
17           him, because I'm not real great with radios,  
18           and our department doesn't have a lot of money  
19           and was trying to find a low band radio that I  
20           would be able to get out.

21                   Because where I'm located at, we have  
22           dead spots out there and I know the Sheriff's  
23           Department and the Troopers use lower bands,  
24           the UHF or VHF. I'm not real familiar with  
25           radios and I asked him if he knew where I

1           could purchase a radio or get a radio that  
2           would help out the Department.

3       Q.     With regard to those low coverage areas?

4       A.     Yes.

5       Q.     And did he assist you?

6       A.     Yes, he did.

7       Q.     And what did he do?

8       A.     He called me up and said, "I have a radio."

9       Q.     Okay. And do you remember what type of radio  
10           it was by any chance?

11      A.     No, it's black and it's UHF, I think.

12      Q.     Where is it now?

13      A.     It's in my Village cruiser in Roswell.

14      Q.     Are you the only Officer that uses that  
15           cruiser?

16      A.     No, my Chief uses it as well.

17      Q.     Is that a marked or unmarked car?

18      A.     It's marked.

19      Q.     Do you know when Captain Cimperman gave you  
20           this radio?

21      A.     Not -- September, somewhere around there. I'm  
22           not positive.

23      Q.     Of last year?

24      A.     Yes.

25      Q.     Prior to or after his termination?



1 A. Prior to.

2 Q. Prior to his termination?

3 A. Yes, sir.

4 Q. Thank you, Officer, I have no further  
5 questions.

6 THE ARBITRATOR: Any Cross?

7 MR. TSCHOLL: Yes.

8 CROSS-EXAMINATION

9 BY MR. TSCHOLL:

10 Q. What's your first name?

11 A. Brett.

12 Q. Brett?

13 A. Yeah, B-r-e-t-t.

14 Q. And you're a part-time Police Officer with the  
15 Village of Newcomerstown?

16 A. No, Village of Roswell.

17 Q. What do you do for Newcomerstown?

18 A. I'm a Reserve.

19 Q. Reserve?

20 A. Um-hum.

21 Q. And what's the difference between being a  
22 Reserve in Newcomerstown and a part-time  
23 Officer in Roswell?

24 A. Roswell I get paid. Newcomerstown I don't.

25 Q. And how many hours a week do you -- do you

1           have another job, I thought you said?

2       A.     Yeah, I work full-time at Bag-N-Save.

3       Q.     Where is that?

4       A.     Bag-N-Save. It's a grocery store.

5       Q.     Full-time at Bag-N-Save?

6       A.     Um-hum.

7       Q.     What do you do for Bag-N-Save?

8       A.     I'm a forklift operator.

9       Q.     So how much time do you spend a week doing  
10           either reserve activity in Newcomerstown or  
11           part-time in Roswell?

12      A.     I put 30 hours in a month at Roswell and 12  
13           hours a month in at Newcomerstown.

14      Q.     And what type of equipment do you have in  
15           Newcomerstown?

16      A.     Right now all I'm doing is sitting on a desk.

17      Q.     In terms of cruisers, cars, what types of cars  
18           do you have in Newcomerstown?

19      A.     Four Crown Vics.

20      Q.     And what do they look like?

21      A.     Just like Philly's cruisers '98, '99, 2000.

22      Q.     Do they have logos on them?

23      A.     Yes, they do.

24      Q.     Any other police vehicles other than the four  
25           marked cruisers?

1 A. The Chief has -- either the Chief or Detective  
2 has a green Taurus. I'm not sure if it's a  
3 personal car or if it belongs to the Village.

4 Q. What about in Roswell, what do you have there?

5 A. One 1996 Crown Victorian.

6 Q. Any other vehicles?

7 A. Nope.

8 Q. So you think that the Chief or the Detective  
9 may have a green Taurus?

10 A. Yeah.

11 Q. And you're not sure if that's --

12 A. I'm not sure if that belongs to the Chief or  
13 the Detective or it's the unmarked for the  
14 Village of Newcomerstown. I know they did get  
15 rid of two or three of their unmarked ones to  
16 purchase a new Crown Vic.

17 Q. Okay. Did the Chief know that you were  
18 getting a radio for your vehicle?

19 A. When I received the radio from Captain  
20 Cimperman, I wasn't with Newcomerstown Police  
21 Department at the time.

22 Q. Who were you with?

23 A. I was with Roswell. I've been with Roswell  
24 going on five years. I recently took a  
25 commission with Newcomerstown Police

1 Department since November.

2 Q. So you've only been with Newcomerstown since  
3 November?

4 A. Correct.

5 Q. And before that you were with Roswell and you  
6 say Roswell only has --

7 A. We have one marked unit.

8 Q. And that's it?

9 A. That's it.

10 Q. So you were asking Mr. Cimperman for a radio  
11 for the one marked unit?

12 A. Yes.

13 Q. And was this going to be a mobile or a  
14 portable?

15 A. It's a mobile. It's in the cruiser.

16 Q. So you were going to put this mobile unit in  
17 the cruiser?

18 A. Yes.

19 Q. And did you do it?

20 A. Myself?

21 Q. Yeah.

22 A. No.

23 Q. Has it been put in the cruiser?

24 A. It's in the cruiser.

25 Q. Okay. So the Chief authorized it?

1 A. Yeah, it was donated to the Village.

2 Q. By whom?

3 A. Captain Cimperman.

4 Q. Okay. And did you talk to the Chief about  
5 putting this radio in the cruiser?

6 A. Yeah.

7 Q. And the Chief thought it was a good idea?

8 A. He didn't have a problem with it one way or  
9 the other.

10 Q. Okay. Would you agree with me, Mr. Belknap --

11 A. It's Belknap, the "K" is silent.

12 Q. Okay. I'm sorry. I bet it gets  
13 pronounced "Belknap" a lot.

14 A. Yes, it does and it gets corrected a lot, too.

15 Q. Would you agree with me that that's really the  
16 Chief's call as to whether or not that radio  
17 went in the cruiser?

18 A. I will disagree with you concerning I put in  
19 more time than my Chief. I'm the one that's  
20 in the vehicle for the required hours. The  
21 Chief has a full-time job where he works  
22 anywhere from 60 to 70 hours a week.

23 I'm the one that puts in most of the  
24 time. I'm the one that's out there. My  
25 safety was at issue, so I spoke with the

1 Chief. I spoke with the Council. No one had  
2 a problem. I ascertained if he would be able  
3 to do it. He said, "Yeah." I got me a  
4 radio. It got it put in.

5 Q. You're saying though, if the Chief didn't  
6 think it was a good idea, you would have gone  
7 ahead and done it anyway?

8 A. If the Chief would have told me, no, it  
9 wouldn't have went in the vehicle.

10 Q. If the Chief -- let me make sure I  
11 understand. If the Chief would have said no,  
12 it would not have gone in the vehicle,  
13 correct?

14 A. Correct. I would have never even worried  
15 about getting a radio.

16 Q. But in this case the Chief learned about it,  
17 had no problem and it went in the vehicle?

18 A. Correct.

19 Q. And you discussed it with the Chief before you  
20 put it in the vehicle?

21 A. Yes, I did.

22 Q. Not after?

23 A. I discussed it with the Chief and I discussed  
24 it with two of our Council members that's on  
25 the Safety Committee.

1 Q. And why did you think it was important to  
2 discuss it with these two --

3 MR. PIOTROWSKI: Objection. Beyond  
4 the scope of the Direct. I've let it go on  
5 for a while, but --

6 THE ARBITRATOR: Finish your  
7 question.

8 Q. Why did you think it was important to discuss  
9 it with the Chief and with Council before you  
10 put it in the vehicle?

11 A. Because I'm a patrolman. I don't have the  
12 authority. I went to my next in command. If  
13 I wouldn't have been able to get ahold of him,  
14 I would have went to the Safety Committee, but  
15 I went to the Chief and I went to the Safety  
16 Committee.

17 It was donated. It wasn't costing  
18 the Village anything. The Village thought it  
19 was a good idea. The Chief said no problem.  
20 I got the radio and got it in.

21 MR. TSCHOLL: Nothing further, Mr.  
22 Belknap. Thank you.

23 THE WITNESS: Thank you.

24 THE ARBITRATOR: Any Redirect?

25 REDIRECT EXAMINATION

1 BY MR. PIOTROWSKI:

2 Q. How much did you say the Village of Roswell  
3 paid for that radio?

4 A. Nothing.

5 Q. So it could in no way be classified as a sale,  
6 could it?

7 A. Nope.

8 Q. As a Police Officer are you familiar with  
9 investigation techniques?

10 A. Yeah.

11 Q. Is it normal to talk to the alleged  
12 perpetrator when investigating a crime?

13 MR. TSCHOLL: Objection. This  
14 exceeds my Cross-examination.

15 THE ARBITRATOR: Well, you exceeded  
16 the Direct a little bit. I'll allow it.

17 MR. PIOTROWSKI: Which is exactly  
18 why --

19 THE ARBITRATOR: I'll permit the  
20 question.

21 Q. In investigating a crime, do you usually talk  
22 to the perpetrator?

23 A. Yes.

24 Q. Okay. I have no further questions. Thank  
25 you, Officer.



1 THE ARBITRATOR: Thank you, Officer.  
2 Dave, anything further?

3 MR. TSCHOLL: No, I have no  
4 questions.

5 THE ARBITRATOR: Okay. Next  
6 witness?

7 WHEREUPON,

8 OFFICER CHAD RUPP

9 who, being first duly sworn, testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. PIOTROWSKI:

13 Q. Officer Rupp, could you spell your name for  
14 us?

15 A. R-u-p-p.

16 Q. And your first name is Chad?

17 A. Right.

18 Q. And how are you currently employed?

19 A. I'm a full-time Patrolman for the Village of  
20 Newcomerstown.

21 Q. How many full-time Patrolmen does the Village  
22 of Newcomerstown have?

23 A. Ten.

24 Q. Prior to August of 2000 while Captain Dave  
25 Cimperman was employed by the New Philadelphia

1 Police Department, were you familiar with him?

2 A. Yes, and even before then, too.

3 Q. And did you ever come to discuss police radios  
4 with him?

5 A. Yes.

6 Q. Did he assist you in obtaining police radios  
7 for some of your vehicles in Newcomerstown?

8 A. Yes, he did.

9 Q. Can you tell me how that occurred?

10 A. My Chief approached me wanting to get a couple  
11 radios. We were in a bind. And he asked me  
12 if I knew where we could find some. I  
13 said, "Well, I can ask around and I can find  
14 out." So I went to Mr. Cimperman for  
15 assistance on that.

16 Q. Are you interested in radios? Why would the  
17 Chief come to you?

18 A. That's one of my areas -- one of the many hats  
19 I wear in the department.

20 Q. The radio guy?

21 A. Right.

22 Q. And when you went to Captain Cimperman, what  
23 did he tell you?

24 A. He said he would see what he could do for me.

25 Q. Did he ultimately provide you with any radios?

1 A. Yes, he did.

2 Q. Do you remember what model they were?

3 A. They were Maxon's.

4 Q. 4150s, do you know?

5 A. Right off, yes.

6 Q. Where are those radios now?

7 A. In our vehicles; Village vehicles, both  
8 unmarked and marked vehicle.

9 Q. And you got two, right?

10 A. Correct.

11 Q. And one went in an unmarked car?

12 A. Right.

13 Q. And where did the other go?

14 A. Into a marked vehicle.

15 Q. Has it been there from day one?

16 A. The Chief will designate -- as he uses  
17 unmarked vehicles -- or the one in the marked  
18 vehicle stays in the marked vehicle. The  
19 other ones go from other --

20 Q. They move them?

21 A. Right.

22 Q. Was Officer Cimperman or Captain Cimperman  
23 paid any money for these radios?

24 A. No.

25 MR. PIOTROWSKI: I have no further

1 questions.

2 THE ARBITRATOR: Cross?

3 THE WITNESS: Thank you, sir.

4 MR. PIOTROWSKI: He may ask you some  
5 questions.

6 CROSS-EXAMINATION

7 BY MR. TSCHOLL:

8 Q. Mr. Haupp, how long have you been a full-time  
9 Police Officer with Newcomerstown?

10 A. Since February of this year.

11 Q. And prior to that, did you have a relationship  
12 with the Newcomerstown Police Department?

13 A. Yes, sir, I did.

14 Q. And what was that relationship?

15 A. Reserve Officer, Tactics Officer.

16 Q. How many hours a week would you work as a  
17 Reserve Officer prior to February of 2001?

18 A. On an average monthly, about 32 hours.

19 Q. And did you have a full-time job during this  
20 period of time?

21 A. Yes, I did.

22 Q. What was that full-time job?

23 A. I was a dispatcher for Newcomerstown Police  
24 Department.

25 Q. How long have you been a dispatcher for the

1 Police Department?

2 A. Since 1998. As for the month exactly --

3 Q. That's okay.

4 A. -- I don't know.

5 Q. When did you first discuss radios with Mr.  
6 Cimperman?

7 A. When my Chief approached me on it.

8 Q. When was that?

9 A. I couldn't give you an exact day on that. We  
10 started to get new cars in and we needed  
11 mobile communication in order to put these  
12 cars into service.

13 Q. Would that have been after you became a  
14 full-time Police Officer or when you were a  
15 dispatcher?

16 A. When I was dispatcher.

17 Q. You can't tell me the year that the Chief came  
18 to you?

19 A. Sometime last year.

20 Q. So it would have been sometime in 2000?

21 A. Yeah, probably so, because we didn't take  
22 delivery on our new cars until later in that  
23 year, but we only had one implemented, but we  
24 didn't have nothing in it.

25 Q. So this was precipitated by Newcomerstown

1 getting new cars?

2 A. Yes.

3 Q. And when did you get the new cars?

4 A. We had one already that was nonoperational,  
5 because of the lack of funding for  
6 communication and we just took delivery on a  
7 2001 model, which was just earlier this year.

8 Q. So you took delivery on that second car in the  
9 year 2001?

10 A. Correct.

11 Q. And the car that was not functional because it  
12 didn't have a communication system, was that a  
13 marked or unmarked car?

14 A. At the time it was an unmarked vehicle.

15 Q. At the time it was an unmarked vehicle and I  
16 take it that that's changed. It's now a  
17 marked vehicle?

18 A. That's correct.

19 Q. Now, so the Chief was aware that you were  
20 getting these radios for these cars?

21 A. Oh, yes, and I was given the direct order by  
22 my Chief to find him some radios.

23 Q. Okay. Was it important that your Chief --  
24 strike that.

25 If your Chief had not given you that

1           order, would you have had the authority to go  
2           ahead and get those radios and put those in  
3           the car without the Chief knowing?

4       A.    No.

5       Q.    Thank you.

6                       MR. TSCHOLL:        I have no further  
7                       questions.

8                       THE ARBITRATOR:   Any Redirect?

9                       MR. PIOTROWSKI:   No redirect.

10                      THE ARBITRATOR:   Okay.  Let's take a  
11                      break.

12                                       - - - - -

13                      (Thereupon, a luncheon recess  
14                      was taken at 12:48 p.m. with  
15                      the proceedings to be continued  
16                      at 1:30 p.m.)

17                                       - - - - -

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AFTERNOON SESSION

THE ARBITRATOR: Next Witness,  
please?

MR. PIOTROWSKI: The Grievant.

THE ARBITRATOR: Mr. Cimperman,  
you've previously been sworn. You understand  
you're still under oath, sir?

MR. CIMPERMAN: Yes, I do.

REDIRECT EXAMINATION

BY MR. PIOTROWSKI:

Q. Mr. Cimperman, prior to August of 2000 how  
were you employed?

A. City of New Philadelphia as Captain, assigned  
to afternoon shift.

Q. And how long had you been a Captain at that  
point?

A. I was promoted June 30th of that year to  
Captain, so a month, month and a half or so.

Q. Okay. And at some point you were notified  
that you were subject to investigation  
regarding a matter involving radios?

A. Yes, sir, I was.

Q. And when was that?

A. When Gregg Popham or the Chief, I don't  
remember which one, actually handed me the



1 letter, handed me the letter indicating that I  
2 was being put on Administrative Leave.

3 Q. Is that the letter on page 13?

4 A. I believe it is, but let me refer to it real  
5 quick. Yes, that's the letter.

6 Q. Okay. And did they call you in for a meeting?

7 A. I can't remember how I ended up in the Chief's  
8 office, but I was called there to the Chief's  
9 office, I don't remember if it was over the  
10 radio and I had come back to the station, but  
11 it was just after the start of the shift. I  
12 think I came out at, like, 1:30 and then a  
13 short period of time later, within an hour, I  
14 was actually starting, I was called into the  
15 office where the Chief and Gregg Popham, the  
16 Safety Director, were standing and they called  
17 me into the office so I walked in.

18 Q. What did they tell you?

19 A. I was handed the letter, Number 13, and I  
20 began reading it and I was told -- I believe  
21 the Safety Director stated that BCI was going  
22 to be called in to conduct an investigation.  
23 A couple of brief comments were related about  
24 the contents of the letter and Chief said he  
25 was waiting on something to come in. My

1 impression was documentation of some sort and  
2 then he had asked me if I had ever used my  
3 position in Internet radio sales and my  
4 response was no.

5 Q. Well, you said there were a couple of comments  
6 made about the subject matter of the letter?

7 A. Briefly, yeah, I think just mentioning Lola's  
8 name. That seems to come to mind. I'm not  
9 sure what else.

10 Q. And then the Chief asked you a question?

11 A. Yes, he did.

12 Q. Do you remember the exact words he asked you?

13 A. Yes, I do.

14 Q. And what were they?

15 A. He said, "Have you ever used your position as  
16 a Police Officer in Internet radio sales."  
17 Those were his exact words.

18 Q. And your answer was?

19 A. No, and I think I went on past that to  
20 say, "No, never."

21 Q. Did you say anything more?

22 A. I think I just reiterated that same point. I  
23 don't recall specifically what I said after  
24 that point.

25 Q. There was more to it than, "No, never,"

1           though?

2       A.    Yeah, I believe there was a couple more words  
3           but, basically, it was just nonaccusational.

4       Q.    Did the Chief or Mr. Popham question you any  
5           further?

6       A.    No, they did not.

7       Q.    What happened then?

8       A.    There was a brief conversation about -- let me  
9           think here a second. At one point it was  
10          stated that I'm going to be heading home. I'm  
11          done right then. That I'm going home on paid  
12          leave and then BCI was going to come in and  
13          conduct an investigation.

14                At one point after this, I  
15          said, "Okay, if that's the way it's going to  
16          be," and I pulled out a business card out of  
17          my wallet and set it down and said, "Here's my  
18          attorney. If you've got any questions for me,  
19          contact my attorney."

20                I contacted Captain Urban, who was  
21          the Detective Captain, and advised him of what  
22          happened and requested that he transport me  
23          back home.

24                We normally get picked up by our  
25          reliefs, so I don't normally drive my own

1 vehicle. None of the Officers normally  
2 drive. For instance, the day shift Captain  
3 would drive to the afternoon Captain's home,  
4 pick him up and drive to the other Captain's  
5 home and pick each other up. We don't  
6 necessarily drive our own personal cars in, so  
7 for that reason, I was going to be transported  
8 back to my residence.

9 I asked Captain Urban to take me  
10 home. Explained what was going on. At that  
11 point he said, "Sure, no problem." He  
12 suggested that I contact an attorney quickly  
13 and he gave me a ride home.

14 Q. Okay. When was the first time you received  
15 any additional information regarding the  
16 charges against you?

17 A. I don't recall the exact date, but it was some  
18 time later when Attorney Hinig gave me some  
19 information via phone call referencing  
20 information that he had received from the  
21 Police Department. And then sometime after  
22 that, I actually met with him at his office  
23 and reviewed it. It was at least a week or  
24 two after the 8/4/00 date.

25 Q. And when Attorney Hinig got that information,

1           did it include the Ebay sheet from your actual  
2           sales?

3       A.     Yes, it did.

4       Q.     Okay. And your understanding of the charges  
5           against you, were they regarding your behavior  
6           on Ebay?

7       A.     Yeah, that was my understanding.

8       Q.     Okay. Were you aware that Mr. Ayers had  
9           called regarding the sale of a radio rib box?

10      A.     Yes, I had heard about that.

11      Q.     You had heard about that?

12      A.     Right.

13      Q.     And was that what your understanding of this  
14           investigation was about?

15      A.     No, I don't believe so. That wasn't what I  
16           was thinking at the time.

17      Q.     What did you think it was about then?

18      A.     Well, not necessarily that complaint, I should  
19           say. It was -- I think they were just looking  
20           at, in general, the impression I had later on  
21           from seeing the paperwork, but I thought the  
22           Ayers's issue was a moot issue. I mean, as  
23           we've shown already, I shipped out this guy's  
24           property long before he complained. I mean,  
25           as far as I am concerned, it was a moot

1 issue. I don't know if he didn't get it on  
2 time or wasn't happy with it or what, but I  
3 thought it was taken care of long before the  
4 guy even filed the complaint.

5 Q. So were you ever told that they were  
6 investigating you regarding Internet fraud?

7 A. No, I was never told that. I was aware at the  
8 beginning of this, I think some of those  
9 points came out when talking to my attorney,  
10 but during the beginning of this, they just  
11 said the Internet radio sale stuff, as you see  
12 on the letter. And Lola -- it was my  
13 impression the Lola issue was the issue they  
14 were going after at that point, but I'm just  
15 guessing at what they were thinking at this  
16 point, of course.

17 Q. Okay. We've discussed the Lola incident in  
18 your earlier testimony. I have one question:  
19 When you took the check from Lola's father and  
20 deposited it in your account, did you intend  
21 to keep that money for yourself?

22 A. No, I did not.

23 Q. Okay. Let's talk about Rocky Dusenberry --

24 A. Dusenberry.

25 Q. Or Dusenberry's portable. When you

1 modified -- or actually when you took that  
2 radio to Alan, did you instruct Alan to add  
3 the phone patch feature to it?

4 A. No, I did not.

5 Q. Did you, to your knowledge, have anything to  
6 do with the phone patch feature being  
7 available on that portable?

8 A. No.

9 Q. Did you show Rocky how to work the scan and  
10 the page?

11 A. Yes, I did.

12 Q. Had you put the phone patch feature on there,  
13 would you have shown him how to work that,  
14 too?

15 A. If I knew it was on there and put it on there,  
16 I might have, but it didn't happen. I showed  
17 him what I knew about the radio at that point.

18 Q. Did you feel adding the user selectable scan  
19 feature to the radio constituted a serious  
20 danger of the Officer carrying the radio?

21 A. No, actually quite the opposite. What was the  
22 habit of quite a few Officers, myself  
23 included, and still happens to this day, is  
24 that when Officers want to monitor a channel  
25 that's not normally in a scan mode, they turn

1        their radio to that channel allowing them to  
2        hear that specific channel. So quite often  
3        what you get, it happens with Dover and our  
4        Department as well as on a regular basis, is  
5        Officers would get out the car for whatever  
6        reason, in a hurry, traffic stop, what have  
7        you, and forget to turn the radio back to  
8        their primary channel. And when they would  
9        call on their radio, they would be  
10       transmitting on the wrong channel, because  
11       they were on that channel to monitor it, which  
12       would not normally have been the scan.

13                For instance, our Park Police and  
14       officers during the summer months regularly  
15       work the park. Originally, in the radios, the  
16       channel 2, which is the channel that the Park  
17       Police normally use and the officers working  
18       that detail during the summer months, would  
19       normally use channel 2. That's not included  
20       in the normal scan. So that if a park officer  
21       was in the park and wanted to listen to his  
22       channel 2 - which is the channel that  
23       everybody is talking on - he would have to  
24       have his radio set on channel 2, but he  
25       wouldn't necessarily hear what's going on on



1 other channels unless he had his scan enabled  
2 thereby getting him three channels to listen  
3 to. And you can get into problems with an  
4 officer, for instance, working a game or  
5 something might switch over to the Sheriff's  
6 Department if they've got something going on  
7 for whatever reason, they would switch over to  
8 one channel and quite often they would end up  
9 transmitting on that channel, because the only  
10 way they could monitor it is to turn the radio  
11 to that specific channel to monitor it.

12 Q. Let's say that you're involved in a call with  
13 the Sheriff's Department and you switched over  
14 to their radio band and that call ends and you  
15 have forgotten to switch back, what happens  
16 when you push your microphone button down and  
17 try to get New Philadelphia dispatch?

18 A. Nothing. You can talk on the Sheriff  
19 Department's channel or whatever channel you  
20 left the radio on.

21 Q. Now, does their dispatcher come back and  
22 say, "New Philadelphia, you're broadcasting on  
23 a Sheriff Department's channel"?

24 A. Sometimes. Not always. That's a hit or miss  
25 kind of thing. It depends on what kind of

1 channel you're on, too. There are a number of  
2 channels like North Police, which we brought  
3 up in other testimony, was not working for a  
4 while, but in some cars it was and in some  
5 portables it was.

6 If you were involved in a chase or  
7 something or you're monitoring a chase coming  
8 your way, or any number of reasons, you would  
9 have problems. People switch over to North  
10 Police or Dover Police or the Sheriff's  
11 Department who forget to change over all the  
12 time.

13 Q. And let me ask you a question: Knowing what  
14 you know now, would you have taken Rocky's  
15 portable to Alan to have them modified?

16 A. No. No.

17 Q. Okay. When you did so, did you feel you were  
18 endangering Rocky?

19 A. No, actually I thought I was doing something  
20 to help improve the safety of whatever  
21 situation he might be in by letting him  
22 monitor what he needed to monitor at that  
23 particular time.

24 It's been said, you know, that  
25 monitoring so many channels is a danger, that

1 in and of itself, may be true, but the point  
2 is that you can pick and choose what channels  
3 you want to monitor.

4 For instance, if you're doing  
5 something that does not require you to listen  
6 to Dover, but it does require you to listen to  
7 our channel 2 for the Park Police, you're able  
8 to do that, which is no different than  
9 monitoring the two channels. You're still  
10 monitoring two, it just takes out that third  
11 channel.

12 Q. When you first began your Email correspondence  
13 with Brinkley Electronics, you were not  
14 identifying yourself as a Police Officer, were  
15 you?

16 A. No, I was not.

17 Q. Now, at some point that changed, do you recall  
18 why?

19 A. I think it may have come up, but I don't  
20 specifically remember exactly what was said.  
21 But it may have come up that they asked me who  
22 I was, but I don't remember the conversation I  
23 had.

24 In fact, I think there was more than  
25 just Email that they sent that they've got

1        pictured here. I had quite a few of those  
2        back and forth with Brinkley Electronics  
3        getting information as to the turnaround time,  
4        the cost, whether or not they could program  
5        those radios. I had quite a few Emails over,  
6        at least, several weeks if not longer.

7        Q. Now, were you obtaining these radios for any  
8        personal gain?

9        A. I had already had the radios.

10       Q. But were you obtaining the programming of  
11       these radios for any personal gain?

12       A. No.

13       Q. And these are the same radios that you gave to  
14       Officers Belknap and Rupp to put into  
15       Newcomerstown and Roswell patrol cars?

16       A. That's correct.

17       Q. At one point you stated you needed two of them  
18       to put in unmarked cars, didn't you?

19       A. Yes, I did.

20       Q. Why would you say that?

21       A. That was what Chad Rupp had related to me.  
22       His Chief was talking to him and I was getting  
23       this information through Chad and Chad stated,  
24       in fact, quite a few times, I was getting a  
25       call from him every couple of days at one

1 point saying that his Chief was pushing him to  
2 hurry up and get these radios. They had some  
3 stuff going on and he mentioned some drug  
4 stuff that they wanted to try doing with the  
5 unmarked cars and that sort of thing. And  
6 they were pushing to get these radios in a  
7 hurry and those are the vehicles that I was  
8 referring to when I wrote that Email.

9 Q. Now, to your knowledge -- strike that.

10 You are, in fact, a radio buff,  
11 aren't you?

12 A. Yeah, active in communication. I'm an amateur  
13 radio operator.

14 Q. And do you go to radio shows or ham radio  
15 shows or sale swap meets, stuff like this?

16 A. As often as possible. Whether it be a City  
17 Police auction like I've done in here in New  
18 Philly or, for instance, last year I went to  
19 Dayton, which is the largest radio show in the  
20 area and, I think, actually in the eastern  
21 United States. I go to those as often as  
22 possible.

23 Q. And what do you do there?

24 A. Well, quite often, you see like at auctions,  
25 for instance, you can pick up communications

1 equipment or at some of these sales you can  
2 buy used equipment and I'll go through and see  
3 if I can find something that I like or that  
4 I'm looking for. From time to time I've been  
5 known to buy different equipment. Sometimes I  
6 sell.

7 Q. Is that where you obtained the items pictured  
8 in 41 through --

9 THE ARBITRATOR: Not 41.

10 Q. 42 through 54?

11 A. Well, some of them, yes. Some of them I got  
12 from police auctions. Some of them I got from  
13 individuals and package deals and some I got  
14 from the military auction. It just depends on  
15 what items you're talking about here.

16 Q. But these are items that you have obtained in  
17 various fashions legally?

18 A. Yes.

19 Q. And that you have later either sold or  
20 attempted to sell?

21 A. Yes, some of them I still have. Some of them  
22 I don't. I go through a lot of stuff over the  
23 years.

24 Q. Do you recall the dates that these things were  
25 sold?

1 A. No, actually I'm not even sure what was sold  
2 when. Most of the stuff I think I still  
3 have. For instance, 42, I know I still have  
4 both of those items. I never sold them. I  
5 think I've got about half of 43 left.  
6 Forty-four I still have. I'm sure of that.  
7 Half of 45 I still have. Forty-six I still  
8 have. Forty-seven I don't have, but 48 I do  
9 and 49 I think I traded to a guy for an  
10 identical model, different band. Fifty I  
11 still have and the books I still have.

12 Q. I'm going to show you a document that we have  
13 identified as Union G.

14 (Union's Exhibit G was  
15 marked for identification.)

16 Q. Can you tell me what that document is?

17 A. Yes. It's a printout of - as the City  
18 Attorney stated - my web page. This is what  
19 is displayed on the page that I have on  
20 TuscoNet.

21 Q. What do you mean, this is what is displayed?

22 A. If you were to go to the web site that is in  
23 my name, the one that the attorneys have  
24 described as "Dave," which is just my name,  
25 this is the actual page that you see when you

1 click on to - quote - for lack of a better  
2 term - the "web site."

3 Q. Okay. This looks like a directory list?

4 A. It is.

5 Q. So each of these items in blue/red, over on  
6 the right --

7 A. My printer is running out of ink.

8 Q. What are they?

9 A. Those are the pictures that you see listed  
10 from 41 through 54.

11 Q. Okay. So the names on the .jpg files  
12 correspond with the names on the bottom of 42  
13 through 54?

14 A. Correct.

15 Q. So if I go to this web page, what it shows me  
16 is a listing of these pictures, files?

17 A. What it shows you is exactly what you're  
18 looking at right here; a simple listing of  
19 what's there.

20 Q. So there's no collection of pictures or  
21 thumbnails of these pictures or anything like  
22 that?

23 A. No, there is not.

24 Q. Okay. For what purpose did you have these  
25 pictures on this web site?



1       A.     Some of these pictures are for stuff that I  
2             was planning on selling. For instance, the  
3             very first one that was posted in 1999, that  
4             picture is - and at one point was larger - but  
5             this picture is a picture I put on there  
6             first, originally, to give me a place to send  
7             to my mother, who lives in Mexico, and my  
8             sister who lives in Lorain. The Department  
9             picture, which is number 41, I happened to  
10            like that picture and I wanted to get a copy  
11            to my mother and my sister and I put it on the  
12            web site back in 1999. Sent an Email to my  
13            mother and sister and told them where the  
14            picture was and that they could download it.

15                    The other pictures, from time to  
16                    time, I would place things on Ebay with  
17                    pictures, so that when somebody would click on  
18                    Ebay, all they would see is a picture of the  
19                    specific item I was trying to sell. For  
20                    example, 44. If they were to click on the  
21                    Ebay auction where I was selling Item  
22                    Number 44, that's all they would see, other  
23                    than my description, was Number 44. They  
24                    wouldn't see any other pictures. They would  
25                    have no other information.

1 THE ARBITRATOR: I'm sorry for  
2 interrupting. Where do you see on here "Item  
3 44"? Oh, you're referencing in the exhibit  
4 book C?

5 THE WITNESS: Correct.

6 THE ARBITRATOR: Thank you.

7 A. And that item would correspond to this list,  
8 the fourth one down where it says, "Image 03."

9 Q. Now, let me make sure I understand. When you  
10 were selling something on Ebay, you would  
11 place the address for this particular image in  
12 your Ebay ad?

13 A. Correct.

14 Q. And when somebody wanted a picture of what you  
15 were selling, they could click on that?

16 A. No, actually they did not have to click,  
17 because the address was included in the Ebay  
18 auction. This picture would automatically  
19 appear on the ad itself, because as they  
20 clicked on the sale item, for instance, it  
21 would automatically upload this picture to the  
22 Ebay site. Only the picture indicated.

23 Q. Okay. So if I were looking for radio  
24 equipment and I went to Ebay and I said, "Oh,  
25 look, he's got a collection of assorted sundry

1 radio crap and that's what I'm looking for," I  
2 would see all the data as to what the bids and  
3 all that other stuff are and then this picture  
4 would be there?

5 A. Yes, it would.

6 Q. So I wouldn't go to your web site to look at  
7 this picture. I wouldn't do anything like  
8 that. This picture would just be pulled from  
9 your web site to the Ebay screen to show me  
10 what you were selling?

11 A. Right. Every time a person would click on  
12 that particular Ebay auction, it would  
13 automatically upload that photo to the  
14 person's screen.

15 Q. Okay. Now, how often did your photograph as a  
16 New Philadelphia Police Officer accompany  
17 that?

18 A. Never.

19 Q. And could somebody get to this photo of you as  
20 a Police Officer, Number 41, as a result of  
21 clicking on the items that you had for sale on  
22 Ebay?

23 A. Not normally. Unless they tried to do some  
24 hacking or something to dig into my particular  
25 web site, but that would take some serious

1 concentrated effort.

2 Under normal circumstances for almost  
3 everybody, it would be unheard of.

4 Q. Now, if you had wanted to identify yourself as  
5 a Police Officer in your Ebay postings,  
6 couldn't you have just done so in the body of  
7 your description?

8 A. Sure.

9 Q. Did you ever do that?

10 A. No, I did not.

11 Q. There seems to be a disagreement between your  
12 testimony as to when you paid Lola  
13 Arrendondo's fines and Ms. Jones's testimony  
14 as to when you paid them.

15 She claims to have talked to you on  
16 the 27th and says that when she talked to you,  
17 you had not yet paid the fines.

18 Your testimony up until this point is  
19 that she had, in fact, paid the -- or you had,  
20 in fact, paid the fines at the time she talked  
21 to you, right?

22 A. That's correct.

23 Q. Okay. Does that mean she's lying?

24 A. No, it just means she's mistaken.

25 Q. Okay. Do you know who was eliciting that

1 statement from her?

2 A. I know now, but at that point, I had no clue.

3 Q. But from what you know now, who was eliciting  
4 that statement from her?

5 A. Officer Hootman.

6 Q. And does Officer Hootman have an axe to grind  
7 with you?

8 A. I believe he does. He hasn't said more than  
9 two words to me in more than four years.

10 Q. And was he, in fact, your subordinate?

11 A. Yes.

12 Q. And is this the same Officer Hootman that  
13 completed the investigation at Safety Director  
14 Popham's instructions regarding your Ebay  
15 sales to Mr. Ayers and the Lola Arrendondo  
16 matter?

17 A. Yeah, he's the one that conducted the  
18 investigation. I'm kind of confused about  
19 that, but --

20 Q. Now, at the August 31st hearing, did you want  
21 to present defenses as to the accusations  
22 against you?

23 A. Yes, I thought it would be appropriate at that  
24 time, but I was overruled.

25 Q. Why didn't you?

1 A. Well, the City, including the attorney sitting  
2 here, flat out said that I was under  
3 investigation for criminal conduct and that  
4 they were going to charge me criminally. In  
5 fact, they've been saying that the entire time  
6 as they said earlier. In fact, he's saying it  
7 now.

8 Q. And did somebody, therefore, tell you not to  
9 testify?

10 A. Yes, both the representative for the FOP and  
11 Mr. Hinig, the attorney who I had talked to  
12 and represented me at that point, suggested at  
13 that point the City had already made up their  
14 mind and they were going to terminate me  
15 regardless and that it was just a waste of  
16 time to put up a defense and keep my mouth  
17 shut.

18 Q. Until the first day of this year, had you ever  
19 been granted any kind of immunity with regard  
20 to the statement made to the City?

21 A. No.

22 Q. Have you ever been notified that you have been  
23 charged with any violations of the Ohio  
24 Criminal Code?

25 A. No, I have not.

1 Q. To your knowledge, have you committed any  
2 violation of the Ohio Criminal Code?

3 A. No, I have not.

4 Q. Do you know if you violated any FCC regulation  
5 with regards to your radio activity?

6 A. None whatsoever.

7 Q. Have you been contacted from anybody at the  
8 FCC or any other law enforcement organization  
9 regarding any of those violations?

10 A. No, I have not.

11 Q. Has -- strike that.

12 If I could have one second.

13 Captain Cimperman, were you ever told  
14 not to carry your personally owned portable  
15 radio on duty?

16 A. No, sir, I was never.

17 Q. Did you hide the fact that you owned your own  
18 portable radio?

19 A. No, I never hid it. I thought, at least,  
20 amongst the percentage of the Officers, I'm  
21 talking 30, 40 or 50 percent, were aware I was  
22 carrying my own radio.

23 Q. And by telling Brinkley's that you were a  
24 Police Officer, were you obtaining any special  
25 services that you would not have been able to

1 obtain if you were not a Police Officer?

2 A. No. There's nothing wrong with getting radios  
3 programmed for any frequency. The FCC  
4 regulations they were talking about are  
5 strictly that you're not allowed to transmit  
6 on frequencies that you're not specifically  
7 licensed for or don't have authorization  
8 through someone else's license.

9 There's nothing illegal or wrong or  
10 even immoral or improper about getting radios  
11 programmed. The agencies that have these  
12 radios are authorized on those frequencies.  
13 They were done for them, so all I did was do  
14 the legwork for them.

15 Q. Okay. Have you been employed since August 4th  
16 of 2000?

17 A. Yes, I have.

18 Q. When did that start?

19 A. Several months after I was fired, I started  
20 working for a company called Pagetel  
21 Incorporated. It's a cellular phone paging  
22 company. Then December 1st of last year, I  
23 used some of my savings and I purchased a  
24 small business and have been running that ever  
25 since.



1 Q. What kind of business?

2 A. Paging and cellular phones.

3 Q. Okay. Has that business paid you? Have you  
4 had any profits?

5 A. No.

6 Q. Have you attempted to obtain any outside  
7 employment?

8 A. Yes, I have.

9 Q. Have you been successful?

10 A. No, actually quite the opposite. There was  
11 two different departments that I actually  
12 talked to and had interviews with and I walked  
13 on water as far as these departments were  
14 concerned. That was the impression I had.  
15 They looked real well.

16 I told them what was going on from  
17 the beginning about the problems with New  
18 Philly. I explained everything and even  
19 provided some of the documentation to show,  
20 you know, my version of events versus the  
21 City's version. And a couple of them said, "I  
22 don't think there's going to be a problem. I  
23 just need to dot some I's and cross some T's  
24 and talk to a few people." And it's my  
25 understanding after talking to the City, I no

1 longer hear from these people and they no  
2 longer return my calls.

3 Again, that's three separate  
4 departments that no longer will talk to me  
5 about employment that I've tried to get.

6 Q. Do you foresee any problems with you returning  
7 to work here if the Arbitrator decides that  
8 you're entitled to your job back?

9 A. No, none whatsoever. I've never been a person  
10 that -- you know, I get over things and I move  
11 on with my life to the best of my ability.

12 It's been said that me and Hootman  
13 don't like each other. That's inaccurate. I  
14 have never had a disagreement with Hootman.  
15 So it appears that he doesn't like me much,  
16 but I don't think anything of him. I mean,  
17 he's a great Officer and he's an excellent  
18 Police Officer. I just don't socialize with  
19 him.

20 Q. Do you continue to have contact with Lola  
21 Arrendondo?

22 A. Yeah, I talked to her as recently as a week  
23 ago. Actually, probably more like three or  
24 four days.

25 Q. Is it still friendly?

1 A. Oh, yeah.

2 Q. So she doesn't harbor any grudges regarding  
3 your failure to pay her fines in a timely  
4 manner?

5 A. No, she never said anything about it. We  
6 still talk on a regular basis.

7 Q. Okay.

8 MR. PIOTROWSKI: I have no further  
9 questions.

10 THE ARBITRATOR: Cross?

11 RECROSS-EXAMINATION

12 BY MR. TSCHOLL:

13 Q. Let's talk about the Lola Arrendondo  
14 incident. I believe you testified that you  
15 did not intend to keep the money. Do you  
16 recall giving that testimony?

17 A. Yes.

18 Q. The check, which is marked as City Exhibit --

19 THE ARBITRATOR: Joint D.

20 Q. Joint D, the checks. Is this accurate? Was  
21 this check mailed to you on or about June 22,  
22 2000?

23 A. If you've got the rest of those exhibits, it  
24 should show what day it was put in the bank.

25 When I took it out of my mailbox and

1 read the note that Lola had included with it,  
2 I put it in my account that day.

3 Q. You indicate you put it in your account on  
4 June 26th?

5 A. That appears to be accurate. I believe that's  
6 right.

7 Q. Why is it that you did not immediately pay the  
8 fine that the money was entrusted to you to  
9 pay the fine?

10 A. That minute -- I don't know what day of the  
11 week it was, but I do remember putting it in  
12 the bank in the afternoon sometime. I didn't  
13 really think about it too much. I wasn't  
14 going to go out-of-pocket for \$300. I wanted  
15 to make sure the check was good.

16 I put it in the bank and I figured  
17 I'd take care of it in a week or so and I just  
18 forgot about it. I screwed up. When she  
19 reminded me about it, I raced out and took  
20 care of it right then.

21 Q. When who reminded you about it?

22 A. Lola.

23 Q. So it's your testimony that Lola contacted you  
24 again and then you took care of it?

25 A. She left a voice mail message for me on my

1 pager. She called my pager at 9:00/10:00 in  
2 the morning one morning and asked me if I had  
3 taken care of it.

4 My pager went off. I woke up. I was  
5 still in bed at that point. I think I was  
6 supposed to go into work that afternoon. I  
7 checked the message. Found it was from her.  
8 I said to myself, "Oh, shit." Jumped up, threw  
9 some clothes on and took care of it and later  
10 that day, went to work just like normal.

11 Q. Do you know what day it was?

12 A. I don't recall the specific day, but I think  
13 it was documented in the paperwork what day  
14 the fines were paid and that would have been  
15 the day that I got this voice message from  
16 Lola. I believe it was the 28th.

17 Q. Of July?

18 A. Yeah, I believe that's accurate. Let me  
19 double check here. From looking at this --

20 Q. Maybe I can help you. Turn to page 35.

21 A. Well, there's two different schools of thought  
22 here, I guess. I don't recall the specific  
23 date. I didn't make note of it, but on the  
24 30th, it indicates that the fines were paid  
25 prior to 7/28/00.

1 Q. Where does it indicate that the fines were  
2 paid prior to 7/28/00?

3 A. Well, from reading this, it says that the date  
4 that this printout was done was 7/28/00.  
5 There's a clerk, it indicates, CJC, which I  
6 believe is the person that actually printed  
7 this out. It shows that the fines were paid  
8 for a total of \$328 and there was nothing  
9 received on this specific date, so that leads  
10 me to believe that the fines were paid the day  
11 before.

12 Q. Is it your testimony that you paid these fines  
13 before you talked to Wendy Jones?

14 A. That is correct. I believe it was the same  
15 day. I paid these fines at approximately  
16 10:00 in the morning. I don't know if they  
17 would have a record of that, but you can  
18 check, I'm sure.

19 And then later on in the afternoon,  
20 after I had already come to work, I was  
21 working the road as a Captain and then Wendy  
22 was leaving work roughly in the 4:00/5:00 time  
23 frame and that's when me and her had that  
24 conversation.

25 Q. So as you sit here under oath, it's your

1 testimony that you paid the fines on July 27,  
2 2000 before Wendy talked to you?

3 MR. PIOTROWSKI: Objection. Compound  
4 question. Ask them individually.

5 MR. TSCHOLL: No. If he  
6 understands the question --

7 MR. PIOTROWSKI: Well then, I'm going  
8 to object because we're going back into  
9 perjury territory and I want a restatement  
10 from them.

11 THE ARBITRATOR: That was two  
12 questions. You might want to break them  
13 down.

14 BY MR. TSCHOLL:

15 Q. It's your testimony that you paid these fines  
16 on July 27, 2000?

17 A. As I testified before, I do not know  
18 specifically from my own memory of the date.  
19 I don't remember. I'm relying on this  
20 document that the City provided, to give me an  
21 indication of the exact date.

22 What I can say is that I paid these  
23 fines prior to talking to Wendy.

24 THE ARBITRATOR: He answered two  
25 questions.

1 MR. PIOTROWSKI: I apologize.

2 Q. Do you have Wendy's statement there, Mr.  
3 Cimperman?

4 A. It's in here somewhere. If you can give me a  
5 page number.

6 Q. Thirty-seven.

7 A. Okay. Thirty-six and 37, yes, I've got it  
8 here in front of me.

9 Q. Let's go through this statement and you tell  
10 me if it's true or false. "On 7/27 at  
11 approximately 11:30 I received a phone call  
12 from Lola Arrendondo --"

13 MR. PIOTROWSKI: Objection. It calls  
14 for speculation.

15 MR. TSCHOLL: I haven't asked the  
16 question yet.

17 THE ARBITRATOR: Continue with your  
18 question.

19 Q. Continuing on her statement: "She had received  
20 a motion to revoke her probation. She  
21 apparently violated her probation by getting  
22 another theft conviction in Stark County and  
23 failed to pay her probation fees as ordered  
24 and failed to pay her fine and court costs. I  
25 spoke with Lola and she stated she had paid



1 the fine and court costs and it paid her  
2 probation fee. I received her file and I  
3 explained to her that the court had only  
4 received a \$30 payment. She stated that she  
5 had sent the money to David Cimperman a while  
6 back for him to come in and pay it. She then  
7 asked me if I knew Officer David Cimperman. I  
8 told her I did and that he hasn't paid  
9 anything on her case, except maybe the \$30  
10 that I stated before that the file had  
11 docketed. I advised her that she would have  
12 to pay the money or contact David Cimperman to  
13 locate the money, that they were insisting  
14 that there was nothing we could do about her  
15 fine and court costs and probation fee not  
16 being paid as it was her responsibility. I  
17 told her Officer Cimperman was on afternoon  
18 shift and she could call the Police Department  
19 after 2 p.m. to speak with Dave."

20 Okay. There's no question, because  
21 there's nothing that pertains to you there.  
22 So now we're getting into, "On 7/27 at  
23 approximately 4:30 I was leaving work and had  
24 seen Officer Cimperman going into the Police  
25 Department. I called for him and asked if

1           Lola had contacted him."

2                       Do you recall Ms. Jones asking you at  
3           about 4:30 on 7/27 if Lola had contacted you?

4       A.   Do I remember?   Why don't you restate the  
5           question, please.

6       Q.   Ms. Jones claims that on 7/27/00 at  
7           approximately 4:30 as she was leaving work,  
8           she saw you going into the Police Department  
9           and that she called you and asked you if Lola  
10          had contacted you, is that true or false?

11      A.   Okay.   You're getting into something I have  
12          already stated, the dates, I do not know the  
13          dates.   Did I have a conversation with Lola --  
14          I'm sorry.   With Wendy, yes, I did.   I don't  
15          recall the dates as I stated already.   I  
16          remember talking to her the evening, the day I  
17          paid the fines, because Lola paged me earlier  
18          that morning.   I talked to Wendy.   The  
19          specific date, I don't remember, but it was  
20          after I paid the fines.   It was about  
21          4:30/5:00, as I said earlier, as she was  
22          leaving work.   We did have a conversation.  
23          Specifically what was said during that  
24          conversation, I don't recall the exact  
25          wording.

1 Q. Wendy says that that conversation took place  
2 on 7/27/00. Do you have any reason to believe  
3 that she's not being truthful?

4 A. That she's not being truthful, no. She's  
5 mistaken, I believe.

6 Q. Well, what date do you think she's -- she's  
7 mistaken? And what is mistaken about her  
8 statement? What portion of her statement?

9 A. Well, I'm not convinced about the date.  
10 Again, going back to your entry here on  
11 page 30. That's what I'm going by.

12 Q. So is it your claim that she's mistaken about  
13 the date and that -- is that what you're  
14 claiming?

15 A. I believe she is, yeah.

16 Q. Well, did she have this conversation with you  
17 then the day before? Would it have been 7/26  
18 that she had this conversation with you?

19 A. No, she may have had it 7/28. As I stated  
20 already, I paid the fines and then later that  
21 day --

22 Q. Just answer my question, Mr. Cimperman.  
23 Okay?

24 A. I have several times.

25 Q. You don't need to keep repeating.

1 Turn to the next page.

2 A. Thirty-seven?

3 Q. Yes. Going down to the sixth line Ms. Jones  
4 says - and referring to you - "He said it  
5 would be taken care of." Do you see that?

6 A. I see the line, yes.

7 Q. Did you tell her that it would be taken care  
8 of?

9 A. I don't believe I said those words, no.

10 Q. Okay. Did you say words to the effect to lead  
11 her to believe that you would take care of it?

12 A. I had already taken care of it at this point.  
13 I don't believe I said those words. I hadn't  
14 specifically talked to Lola, but I had taken  
15 care of it prior to talking to Wendy.

16 Q. Did you say words to Wendy that would have led  
17 Wendy to believe that you had taken care of  
18 it?

19 A. I believe at one point Wendy asked me if I had  
20 talked to Lola and at one point I told her I  
21 was going to call her later. Now, if she  
22 misconstrued that, that's possible, but that  
23 had nothing to do with the fines. The fines  
24 were paid that morning.

25 Q. And your answer had nothing to do with my

1 question.

2 A. Sorry.

3 Q. Listen to my question, please. Wendy is  
4 saying in this statement that you told her it,  
5 Lola's fine, would be taken care of. Do you  
6 see that in here?

7 A. Yes, I've told you I've seen it.

8 Q. My question to you is: Is that a true or false  
9 statement attributed to you about what you  
10 told Wendy?

11 A. I believe that's a false statement.

12 Q. And what is false about it?

13 A. As I said already, I don't remember saying  
14 anything similar to that, other than what I've  
15 already told you.

16 The fines were paid that morning. I  
17 mean, I'm sorry, but I'm not going to change  
18 my testimony just to suit what you want.

19 Q. Please don't, Mr. Cimperman.

20 THE ARBITRATOR: Look, gentlemen,  
21 let's not argue.

22 Q. Did you tell her that you had already taken  
23 care of it that morning?

24 A. Yes.

25 Q. You did?

1 A. Yes.

2 Q. And you can see that she either did not hear  
3 it that way -- she didn't hear it that way,  
4 did she?

5 MR. PIOTROWSKI: Objection. He can't  
6 testify to what she heard it as.

7 THE ARBITRATOR: Sustained.

8 Q. That's not what she wrote down in the  
9 statement, is it?

10 A. No, it's not.

11 Q. And how was it that if you took care of it on  
12 7/27 -- strike that.

13 Was there a precipitating event that  
14 caused you to take care of it on 7/27 before  
15 you talked to Wendy?

16 A. Yes.

17 MR. PIOTROWSKI: Objection. It's  
18 assuming facts not in evidence.

19 THE ARBITRATOR: Overruled.

20 Q. You may answer.

21 A. I got a call from Lola.

22 Q. And did you talk to her?

23 A. No, I did not.

24 Q. Did she leave a message on your recorder?

25 A. On my voice mail, yes, she did.

1 Q. And what time did you receive that call?

2 A. It was in the morning sometime. I'm guessing  
3 roughly 9:00/10:00 time frame.

4 Q. And how was it that you guess you got it at  
5 9:00 or 10:00?

6 A. It woke me up. It was daylight hours. It was  
7 the morning. I'm not sure. It was before I  
8 went into work, so it was sometime that  
9 morning.

10 Q. You work afternoons?

11 A. Yes.

12 Q. You work 2:00 to 10:00?

13 A. I go in at 1:30.

14 Q. And what time did you get off?

15 A. Roughly 9:30 depending on when my relief shows  
16 up or calls.

17 Q. And then you go to bed generally when you  
18 finish work?

19 A. No, not normally.

20 Q. What do you do?

21 A. Whatever I want. Watch TV. Watch movies.

22 Q. You generally sleep until 9:00 or 10:00 in the  
23 morning?

24 A. If I'm up until 2:00 or 3:00. It's been known  
25 to happen.

1 Q. Do you have voice mail or do you have a  
2 recorder?

3 A. Voice mail. I may have had a home tape  
4 recorder or a home answering machine at that  
5 point, but the message I got was on my voice  
6 mail.

7 Q. Well, you don't hear your voice mail when  
8 somebody calls?

9 A. No, you don't, but your pager goes off.

10 Q. So it was your pager that woke you up?

11 A. Yes.

12 Q. Not her call?

13 A. Her call was what set the pager off.

14 Q. So her call --

15 MR. TSCHOLL: Could you go back  
16 and read his testimony when I first asked him  
17 that question?

18 (The reporter read the record as requested.)

19 Q. So on your pager, a person is able to leave a  
20 message that you can read or record and then  
21 you can play it?

22 A. No, the way voice mail on a pager works is,  
23 the person has the option of either punching  
24 in a number, like by punching the keys in on  
25 the phone, and that number will be displayed



1 on the pager.

2 If you've got voice mail active on  
3 your pager, and you leave a message, "Hi, this  
4 is Bill. Call me when you get home," and then  
5 they hang up, your pager will go off with your  
6 own pager number indicating that you've got  
7 voice mail.

8 You call into your own pager and  
9 enter your access code and it allows you to  
10 play back the message.

11 MR. TSCHOLL: Off the record.

12 (Discussion held off record.)

13 (City's Exhibit H was

14 marked for identification.)

15 WHEREUPON,

16 MICHELLE GREEN

17 who, being first duly sworn, testified as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. TSCHOLL:

21 Q. Would you state your name, please.

22 A. Michelle Green.

23 Q. Are you employed?

24 A. Yes.

25 Q. By whom are you employed?

1 A. New Philadelphia Municipal Court.

2 Q. How long have you been employed by Philly Muni  
3 Court?

4 A. About two-and-a-half years.

5 Q. And what is your job with the Municipal Court?

6 A. I'm a bookkeeper.

7 Q. What are your duties as the bookkeeper?

8 A. I, basically, do refunds, balance the books at  
9 the end of the month. It's my job to get the  
10 receipts put away for each day. Just various  
11 tasks.

12 Q. Are you keeper of the records?

13 A. Yes.

14 Q. I've handed to you what we marked as  
15 City Exhibit H. Would you please take a look  
16 at this document.

17 A. (Witness complies.)

18 Q. Does this document indicate when Ms. Lola  
19 Arrendondo's fines were paid?

20 A. Yes, it does.

21 Q. And can you tell the Arbitrator the date  
22 that's indicated on this document that those  
23 fines were paid?

24 A. July 28th of 2000.

25 Q. And how is it that you know they were paid on

1 July 28, 2000?

2 A. It goes by the date at the top of the sheet.

3 Q. And I take it that this document is printed  
4 off some computer?

5 A. Yes, it's off our receipting machine.

6 Q. Can you tell me the procedure that goes into  
7 recording the date that it's paid and the  
8 amount that's paid, please?

9 A. The computer automatically has it put into the  
10 system and it records all payments taken for  
11 that day. It changes every day.

12 Q. I'm sorry. What did you say your name was?

13 A. Michelle Green.

14 THE ARBITRATOR: G-r-e-e-n, with an E  
15 at the end?

16 THE WITNESS: No, just like the  
17 color.

18 Q. Michelle, I'm handing you what's been marked  
19 as City Exhibit C. Could you please turn to  
20 page 30 of City Exhibit C.

21 A. (Witness complies.)

22 Q. Take a look at that document and when you're  
23 ready to answer some questions, if you will  
24 look up so I know you're ready to answer  
25 questions.

1 A. Okay.

2 Q. What is City Exhibit 30?

3 A. This is a copy of the criminal cash receipts  
4 screen off our system at the court.

5 Q. Now, looking at what's been marked as  
6 City Exhibit 7, which you just testified  
7 indicates that the fine was paid on 7/28/00.  
8 How do you give that with this document which  
9 shows that there is no balance due, but yet it  
10 shows that there was nothing received today  
11 and the date the document is dated is 7/28/00?

12 A. This will show there is no balance due because  
13 the date of 7/28/00, the clerk receipted a  
14 cash payment and it has the receipt number at  
15 the top, also. And that takes away the  
16 balance due once that's receipted, so it will  
17 just show under the paid to date column.

18 Q. Are the receipt numbers on 30 and City H the  
19 same?

20 A. Yes.

21 Q. Why doesn't 30 indicate that there was \$150  
22 received today, being 7/28? Can you explain  
23 that?

24 A. Normally the last thing receipted would show  
25 under "received today," but not unless -- I

1 don't know. I really don't know.

2 Q. Turn to page 35.

3 A. (Witness complies.)

4 Q. What is this document?

5 A. This is the docket entry from this case.

6 Q. And down on the entry on 7/28 it shows two  
7 receipt numbers, that there was 148 and 150  
8 received with two different receipt numbers.  
9 Do you see that?

10 A. Um-hum.

11 Q. And would this document indicate when those  
12 payments were received?

13 A. Yes, it goes by the date of 7/28 off to the  
14 left.

15 Q. So when were these payments received?

16 A. 7/28.

17 Q. Is there any question in your mind as to the  
18 date that the payments were received in this  
19 case?

20 A. No, there's not.

21 Q. And what is that date?

22 A. 7/28/00.

23 MR. TSCHOLL: That's all I have.

24 Thank you.

25 THE ARBITRATOR: Any Cross?

1 MR. PIOTROWSKI: Yeah.

2 CROSS-EXAMINATION

3 BY MR. PIOTROWSKI:

4 Q. Is there anywhere on either 29 or the  
5 City Exhibit H that states when Wendy Jones  
6 talked to David Cimperman?

7 MR. TSCHOLL: We'll stipulate,  
8 no.

9 Q. Okay. And your testimony was that there  
10 should have been something in the "received  
11 today" column?

12 A. There normally is. And on this case, I don't  
13 know why.

14 Q. Do you take two-party checks for payment of  
15 fines?

16 A. No.

17 MR. PIOTROWSKI: No further  
18 questions. Thank you.

19 THE ARBITRATOR: Any further Direct?

20 MR. TSCHOLL: No.

21 THE ARBITRATOR: Thank you, very  
22 much.

23 FURTHER EXAMINATION

24 BY MR. TSCHOLL:

25 Q. Mr. Cimperman, just following that up, do you

1 recall when you paid off this fine? Did you  
2 pay it? How did you pay it?

3 A. Cash.

4 Q. You paid it with cash.

5 Is there some reason you paid it with  
6 cash and not a check?

7 A. I just went to the bank and took the funds out  
8 and paid it with cash.

9 Q. And so you made a withdraw from one of your  
10 accounts?

11 A. Yes.

12 Q. Which account did you make a withdraw from?

13 A. My checking account.

14 Q. So you wrote the bank a check for how much?

15 A. I just went to the bank and made a cash  
16 withdraw.

17 Q. Out of your checking account?

18 A. Yes.

19 Q. Well, you must have written the bank a check;  
20 is that correct?

21 A. No, I just go up there and, you know, to the  
22 New Philly Credit Union and gave them my card  
23 and they know who I am and said, "I want to  
24 make a cash withdrawal."

25 Q. And how much did you withdraw?

1 A. Probably 300, in that neighborhood. I  
2 couldn't tell you specifically, but somewhere  
3 in that neighborhood.

4 Q. And did they give you a receipt for that  
5 withdraw?

6 A. I'm sure they did.

7 Q. Do you have a copy of that receipt?

8 A. No.

9 Q. Can you attribute any motive to why Ms. Jones  
10 would either lie about her conversation with  
11 you or --

12 A. No, I never said she lied. I don't believe  
13 she did. I think she's just wrong about the  
14 date.

15 Q. Well, no, it's much more than the date, isn't  
16 it, Mr. Cimperman? She states in here that  
17 she talked to you and you told her -- and,  
18 again, this is line 6, again, okay? On page  
19 37, that you told her that it would be taken  
20 care of.

21 A. Okay. Well, I can't say why she said that or,  
22 you know, what she was trying to mean when she  
23 wrote it. I didn't write it. I mean, is she  
24 paraphrasing something? I've got no clue.

25 Q. So would you agree with me that it's more in



1 her statement than just a date?

2 MR. PIOTROWSKI: Objection.

3 Relevance?

4 THE ARBITRATOR: Overruled.

5 A. Yeah, there's more than just the date that  
6 appears to be inaccurate.

7 Q. And this young lady, Michelle Green, who  
8 testified that there's no question in her mind  
9 that the payment was made on 7/28, is she also  
10 wrong?

11 A. No, actually, I think she's accurate on the  
12 date, within reason. I've got no way of  
13 knowing exactly, because I don't have the  
14 exact date, but as I stated before, I paid the  
15 fines in the morning sometime. I can't tell  
16 you exactly what time, but it was sometime  
17 shortly after I got the voice mail message  
18 from Lola. I went out and paid the fine and  
19 later that evening, 4:30 --

20 Q. Mr. Cimperman, what question are you  
21 answering?

22 A. I thought I was answering the question you  
23 just asked.

24 Q. What was that question?

25 A. Have the court reporter repeat it.

1 Q. Well, can you remember it?

2 A. Not the specific wording at this point.

3 MR. PIOTROWSKI: Objection.

4 THE ARBITRATOR: Sustained.

5 Q. Listen to my question, please, Mr. Cimperman.  
6 Michelle Green just testified that there is no  
7 question in her mind that the money was paid  
8 on 7/28. Not the morning of 7/27.

9 MR. PIOTROWSKI: Objection. Asked  
10 and answered. He said he thought she was  
11 correct about that.

12 THE ARBITRATOR: Overruled. Go  
13 ahead.

14 A. I believe she may be correct about this. I  
15 have nothing to dispute that. I believe  
16 that's as accurate as I can know.

17 Q. So if she's correct and the money was paid on  
18 7/28, then you didn't pay the money on 7/27,  
19 did you?

20 A. I don't know how many times I can tell you  
21 this. I don't know the date. I don't know  
22 the date, so how can I answer the question  
23 that I told you a dozen times, I don't know  
24 the specific date?

25 I'm relying on these exhibits to set

1 up the exact date. I don't know.

2 Q. What exhibits are you relying on?

3 A. The one you've got in your hand. The other  
4 stuff that the City has provided.

5 Q. Look, let me make this very clear. One of the  
6 City's charges against you is that you did not  
7 pay the money until you got "caught"?

8 A. That's not true.

9 Q. And you're testifying under oath in front of  
10 this Arbitrator that that's not true, that you  
11 paid the money before you got "caught," right?

12 A. Before I was confronted by anyone, I paid it.  
13 Lola paged me reminding me about it. I paid  
14 the fines. Later that evening, is when I  
15 talked to Wendy. I've answered your  
16 question. I'm sorry.

17 Q. But the documentation --

18 A. I can't testify to dates that I don't know  
19 about. I'm sorry.

20 MR. PIOTROWSKI: I've got an  
21 objection.

22 THE ARBITRATOR: Woe, woe, woe. Wait  
23 until he asks his question. Listen to the  
24 question. Don't interrupt when he's giving  
25 his answer. You object at the end of the

1 question. You instruct him appropriately.  
2 We'll be doing just fine.

3 Go ahead. Ask your question.

4 BY MR. TSCHOLL:

5 Q. Wendy says she talked to you at 4:30 on 7/27  
6 and you said to her on 7/27 at approximately  
7 4:30, that it would be taken care of.  
8 Michelle Green testified that it was taken  
9 care of on 7/28 after you were confronted by  
10 Wendy Jones.

11 MR. PIOTROWSKI: Objection.

12 THE ARBITRATOR: Let him finish the  
13 question.

14 Go ahead. Was the question  
15 concluded?

16 MR. TSCHOLL: No.

17 Q. Now, are both these people mistaken?

18 MR. PIOTROWSKI: Objection. Compound  
19 question. Assuming facts not in evidence.

20 THE ARBITRATOR: It is a compound  
21 question, but it's not two questions, as it  
22 relates to the testimony of two individuals  
23 whose testimony is perceived by the question  
24 or to be in disagreement. So I will permit  
25 the Witness to answer the question.

1       A.    Ms. Green didn't say I was confronted by Wendy  
2            Jones, which is what you just stated.    So  
3            that's not accurate.

4                    As far as the dates, it's my  
5            understanding that Wendy Jones is wrong about  
6            - among other things - the date.   Possibly  
7            she was thinking the 30th or the 28th, so I  
8            paid it on the 28th, if that's what the  
9            document says.   I've got nothing to verify  
10           that, other than the documentation you've  
11           got.

12                   And later that day, I talked to Wendy  
13           Jones.   So maybe Wendy Jones is mistaken about  
14           the date and it wasn't the 27th but, in fact,  
15           the 28th.

16                   Ms. Green only testified to what date  
17           her receipts show it was paid, not to whether  
18           or not I was confronted by anybody or not.

19       Q.    Anything else you care to add to that  
20            explanation?

21                   MR. TSCHOLL:       Objection.  
22           Badgering the Witness.

23                   THE ARBITRATOR:   Sustained.

24       Q.    Let's go back to the August 4, 2000 meeting  
25            that you had with Chief Staggers and Safety

1 Director Popham. City Exhibit C-13.

2 Somebody asked you about your  
3 Internet transaction; is that correct?

4 A. No.

5 Q. What is not correct about that?

6 A. The terminology that Chief Staggers used is he  
7 asked me if I used my position during Internet  
8 radio sales.

9 Q. And exactly what did he say?

10 A. Chief Staggers asked me if I had ever used my  
11 position as a Police Officer in Internet radio  
12 sales.

13 Q. "Have you ever used your position as a Police  
14 Officer in Internet radio sales"; is that  
15 correct?

16 A. Yes.

17 Q. And did Chief Staggers use those exact words  
18 or did he use words to the effect, which lead  
19 you to believe that that was the question he  
20 was asking you?

21 A. I'm pretty confident those were his exact  
22 words.

23 Q. And what's your basis for that confidence?

24 A. My memory, among other things. I thought  
25 about this quite a bit. It was a pretty big

1 deal.

2 Q. Your memory. I'm sorry.

3 A. No. Go ahead.

4 Q. Go ahead. Finish.

5 A. I just did. My memory and the letter that was  
6 handed to me when I was asked the question,  
7 that's what I remember him saying.

8 Q. You said your memory among other things?

9 A. Yes, that's what I said.

10 Q. Other than your memory, what else is there?

11 A. The letter, as I just stated a second ago that  
12 specifically says, "Internet radio sales."

13 Q. So you have your memory. You have the  
14 letter. What else? Anything else?

15 A. Not at this time, no, not that I'm aware of.

16 Q. I think we ascertained on the first day of  
17 hearing that you taped this conversation; is  
18 that correct?

19 A. No, that's not correct.

20 Q. You did not tape this conversation?

21 A. As I stated in the first hearing, I don't know  
22 if I did or not. That's what I told you  
23 then. I carry a tape recorder quite often. I  
24 don't remember if this conversation was  
25 recorded or not. That's what I testified to.

1 Q. Since the last hearing, have you gone back to  
2 look for that tape?

3 A. Oh, yeah, I look on a regular basis.

4 Q. And did you find it?

5 A. No, not yet.

6 Q. So you did not find that tape or listen to  
7 that tape to help you in this hearing?

8 A. No, I did not.

9 Q. And if the Chief would have asked you about  
10 Internet transactions, would your response to  
11 the Chief had been different at the August the  
12 4th meeting?

13 A. I don't know.

14 Q. Had you used your position as a Police Officer  
15 for Internet transactions prior to August 4,  
16 2000?

17 A. I'm not sure how to answer that question.  
18 Well, let me put this way: I put my name,  
19 position, home number, cell phone number,  
20 pager number, every number that I had, so that  
21 Brinkley Electronics could get ahold of me, so  
22 not to necessarily delay getting these radios  
23 programmed. I didn't and still don't believe  
24 that I used that for personal gain or benefit  
25 of any sort. And that's the only time that I



1           ever recall ever listing the fact that I was a  
2           Police Officer on any transactions, whether it  
3           would be calling Gaul's or ordering something  
4           from Gaul's, a police supplier, or Internet  
5           radio sales or anything else. That's the only  
6           time I recall ever using -- putting in my name  
7           and position.

8       Q.    And what time was that?

9       A.    Brinkley's. You've got the Emails right  
10           there.

11      Q.    You just testified that the only time you  
12           recall using -- something about the only time  
13           you recall using your position. And I'm  
14           asking you what time was that?

15      A.    No, you're changing what I said, sir. What I  
16           said was: The only time I ever listed my title  
17           or anything else was during this Brinkley  
18           order to get these radios programmed.

19                   I don't recall using or printing or  
20           making anyone aware that I was a Police  
21           Officer in any other transaction, whether it  
22           was -- and then I mentioned Gaul's as an  
23           example.

24      Q.    So it was only in these Emails that you used  
25           your position as a Philly Police Officer?

1 A. No, sir. You're trying to get me to say  
2 something different from what I testified to.

3 What I said was: I put my name and  
4 position, my home phone number, my voice mail,  
5 my Email, everything else. I don't believe I  
6 was using my position for gain or benefit to  
7 me in any way.

8 Q. The Chief testified that he asked you on  
9 August the 4th if you had used your position  
10 as a Police Officer in any Internet sales or  
11 transactions. Did you hear the Chief testify  
12 to that?

13 A. Yes, I did.

14 Q. Was that testimony accurate?

15 A. No.

16 Q. And what was inaccurate about that testimony?

17 A. As I testified before, the Chief asked me if I  
18 used my position in Internet radio sales.  
19 That is what he said.

20 Q. And my question to you, Mr. Cimperman, is: If  
21 the Chief is accurate and he asked you if you  
22 used them in sales and transactions, what  
23 would your answer be?

24 A. I still believe -- I don't know how to --

25 MR. PIOTROWSKI: Objection. This

1 calls for speculation. It's been asked a  
2 number of times. I believe it's been  
3 answered.

4 THE ARBITRATOR: Offer it one more  
5 time. I'm not certain it has been answered at  
6 this point.

7 A. If the Chief is accurate under his specific  
8 question, the question that he is saying now  
9 he said then, I would have probably said, no,  
10 at that point.

11 Q. Why?

12 A. Because I didn't use my position for any  
13 transactions. Putting down how someone could  
14 get ahold of me, I don't believe is using my  
15 position. But, again, that wasn't the  
16 question that was asked.

17 Q. Mr. Cimperman, turn to City Exhibit C-1.

18 A. (Witness complies.)

19 Q. Identify this document, please.

20 A. It's a letter to Brinkley Electronics signed  
21 by me.

22 Q. And you signed it as "David F. Cimperman  
23 Junior, Captain New Philadelphia Police"; is  
24 that correct?

25 A. Yes.

1 Q. And that's how you signed it?

2 A. Yes, it is.

3 Q. Are you using your position as a Captain in  
4 the New Philadelphia Police Department for an  
5 Internet sale or transaction in City Exhibit  
6 1, yes or no?

7 A. I can't answer a question "yes" or "no," all  
8 the time. I didn't use it for benefit. I  
9 don't believe I used it here.

10 Q. Your answer is "no" then?

11 A. Yeah, I would have to say no.

12 Q. Mr. Cimperman, turn to City Exhibit 7.

13 A. (Witness complies.)

14 Q. You signed this document "David F. Cimperman  
15 Junior, Captain New Philadelphia Police"; is  
16 that correct?

17 A. My name is typed that way, yes, that's the way  
18 I typed it.

19 Q. That's the way you typed it.

20 Did you use your position as a New  
21 Philadelphia Police Captain in an Internet  
22 sale or transaction to Brinkley Electronics on  
23 or about July 27, 2000?

24 A. I did not use my position for gain or personal  
25 benefit during this transaction.

1 Q. That wasn't my question, was it?

2 A. Yes, it was, I believe.

3 Q. Let me ask it, because maybe there was  
4 something about my question that was unclear.  
5 Did you use your position as a Captain in the  
6 New Philadelphia Police Department in an  
7 Internet transaction with Brinkley, on or  
8 about July 27, 2000? "Yes" or "no"?

9 A. Can you define "use"?

10 Q. Please just answer my question --

11 A. I can't.

12 Q. -- as you understood it.

13 A. As I understood it, I answered the question  
14 just a minute ago. I did not use my position  
15 as a Police Officer for any benefit or gain.

16 Did I mention my name in this one?  
17 Yes. Did I mention my work, home, cell phone,  
18 work number and place of employment? Yes, I  
19 did. I'm sorry it's not fitting what you  
20 want, but that's the way it is.

21 Q. Turn to page 10.

22 A. (Witness complies.)

23 Q. Do you see this document?

24 A. Yes, I do.

25 Q. Can you identify this document?

1 A. It's your Exhibit 10.

2 Q. Do you know what this document is for?

3 A. No.

4 Q. I mean, is it a page out of the Bible? Is it  
5 a grocery list?

6 MR. PIOTROWSKI: Objection.

7 THE ARBITRATOR: Sustained.

8 Q. Do you know what this document is?

9 A. I'm looking at it and I'm getting a rough idea  
10 what it is.

11 Q. Well --

12 A. But I've never seen it until you produced it  
13 here.

14 Q. This is from Brinkley's, is it not?

15 A. It appears to be.

16 Q. Did Brinkley's program Maxon-4150s X-mobiles  
17 for you?

18 A. Yes.

19 Q. Do you know if Brinkley's verified your  
20 employment with the New Philadelphia Police  
21 Department on 7/31/00?

22 A. Well, the note that is in this packet  
23 somewhere indicates they did.

24 Q. Well, turn to page 19, if you would, please.

25 A. (Witness complies.)

1 Q. Is that the note that you're referring to?

2 A. Yes.

3 Q. This indicates that they attempted to contact  
4 the Chief about your employment; is that  
5 correct?

6 A. That's what it appears to say.

7 Q. And did you pay -- go back to 10, please.

8 A. (Witness complies.)

9 Q. Did it cost you \$60 to program these  
10 Maxon-4150 mobile radios?

11 A. Yes, it did.

12 Q. Incidentally, I believe you testified that Mr.  
13 Hootman has an axe to grind with you?

14 A. Yes, I believe he does.

15 Q. Do you know what the source of the axe is?

16 A. No, I'm not really sure. I've heard a lot of  
17 rumors, but it's been going on since shortly  
18 after I started. I just know what I've been  
19 told.

20 Q. You reprogrammed Rocky Dusenberry's radio,  
21 police radio; is that correct?

22 A. I had someone do it.

23 Q. Did you ask the Chief if it was okay if you  
24 could have his radio reprogrammed?

25 A. No, I did not.

1 Q. Now, you heard both the officers that you had  
2 come in to testify for you today, testify that  
3 the Chief asked him to do it or they had the  
4 Chief's approval for doing it, for having the  
5 radios reprogrammed. Did you hear that  
6 testimony?

7 A. Yes, I did.

8 Q. Why did you not ask the Chief prior to having  
9 Rocky's radio reprogrammed if it was okay with  
10 him?

11 A. At the time I didn't believe it was necessary.

12 Q. Why?

13 A. I just didn't believe it was necessary. It  
14 wasn't -- it was actually a benefit.

15 Q. In your opinion, it was a benefit; is that  
16 correct?

17 A. Mine and several others.

18 Q. At the time you did this, you were not a  
19 Captain, were you?

20 A. No, I was not.

21 Q. Did you check with your Captain to see --  
22 strike that.

23 Who was your Captain at the time?

24 A. Captain DiMatteo.

25 Q. Did you ask him if it was okay to have the



1 scan feature on the mobile unit reprogrammed?

2 A. No, I did not.

3 Q. And then you had the mobile unit in Car 24  
4 reprogrammed also, did you not?

5 A. Yes.

6 Q. Did you check with anyone before you had that  
7 unit reprogrammed?

8 A. No, sir, I did not.

9 Q. And why not?

10 A. The same reason as I stated for the other one,  
11 I didn't feel it was necessary.

12 Q. You heard Kenny Staley - I don't think that  
13 was his last name - Kenny's testimony  
14 regarding their advice to police departments  
15 on scan units?

16 A. Yes.

17 Q. And you heard him testify that their  
18 recommendation to the Police Department is to  
19 keep the scan, the number of -- what is it?  
20 Bands or stations that they can scan to a  
21 minimum?

22 A. Yes.

23 Q. And you heard him give his rationale for that  
24 advice too; did you not?

25 A. Yes, I did.

1 Q. And you disagree with that advice; is that  
2 correct?

3 A. No, I don't say that I disagree with it.

4 Q. So you agree with it?

5 A. I would lean towards agreeing to it. I'm not  
6 saying I agree 100 percent with his rationale,  
7 but there is some basis there.

8 Q. What part of his rationale would you disagree  
9 with?

10 A. I don't remember every word he said right now,  
11 but for the most part, I would tend to agree  
12 with him.

13 Q. At the meeting on August the 4th, did cop an  
14 attitude with --

15 MR. PIOTROWSKI: Objection.

16 THE ARBITRATOR: Let him finish the  
17 question.

18 Q. Did you cop an attitude with Safety Director  
19 Popham and Chief Staggers?

20 MR. PIOTROWSKI: Objection.

21 THE ARBITRATOR: Sustained.

22 Q. Did you become belligerent at the meeting  
23 with --

24 MR. PIOTROWSKI: Objection.

25 Q. -- Chief Staggers?

1 MR. PIOTROWSKI: Objection.

2 THE ARBITRATOR: Overruled.

3 A. No.

4 Q. Why was it that you didn't -- did you try to  
5 discuss the specifics of the items raised with  
6 the Chief and the Safety Director?

7 A. They didn't really raise any items at that  
8 time. They just handed me the letter, asked  
9 me the one question and told me that I was on  
10 Administrative Leave pending an investigation  
11 including criminal conduct that they  
12 supposedly suspected me of at that point and  
13 that BCI was going to be conducting an  
14 investigation.

15 I didn't believe that any other  
16 questions - other than the ones the Chief  
17 asked, were even brought up - I was put on  
18 Administrative Leave and went home.

19 Q. Did you know prior to going into that meeting  
20 that there was a problem with what you had  
21 done?

22 A. No.

23 Q. How was it that you happened to have this card  
24 from this lawyer that you happen to give to  
25 him and told him to contact?

1 MR. PIOTROWSKI: Objection. Delving  
2 into the realm of why he got the card from his  
3 lawyer, which is, once again, back to, "When  
4 did you retain the lawyer?" And, "Why did you  
5 talk to the lawyer?"

6 MR. TSCHOLL: I think it's proper  
7 as to why he would have a card of some lawyer  
8 that he could immediately produce and give to  
9 the Chief.

10 THE ARBITRATOR: I don't want to hear  
11 any communications with your lawyer. If you  
12 can answer the question without violating your  
13 privilege with your attorney, you can do so.

14 Can you restate the question,  
15 please?

16 BY MR. TSCHOLL:

17 Q. How was it that you had this card available to  
18 immediately produce to the Chief and to the  
19 Safety Director at this hearing on August 4,  
20 2000?

21 A. I went and talked to this lawyer, because I  
22 was afraid of retaliation from the Department  
23 when I filed my sexual harassment complaint.  
24 So I got advice from a lawyer.

25 Q. Turn to page 41 of the -- C-41, Mr.

1 Cimperman.

2 A. (Witness complies.)

3 Q. You testified that this is from your web site  
4 on TuscoNet?

5 A. I wouldn't call it necessarily a "web site,"  
6 but it's from a space that I have on TuscoNet,  
7 yes.

8 Q. And if somebody has your address, they can get  
9 into your web site; is that correct? Or  
10 whatever you call this.

11 A. If they have the address, they can look at  
12 this page and then take a look at the  
13 individual pictures.

14 THE ARBITRATOR: And he was referring  
15 to D and G?

16 Q. So they can get Union G and they can get City  
17 41 through 54; is that correct?

18 A. Yes.

19 Q. And do you have a business card that has your  
20 web site address on it?

21 A. No.

22 Q. How would anybody know what your web site  
23 address is to get into this?

24 A. They're not supposed to. It's not meant for  
25 anybody to get into.

1 Q. Do you know Rick Welsch?

2 A. Not off the top of my head.

3 Q. Do you know how he got your web site address  
4 and was able to give that to Mr. Popham --  
5 give Mr. Popham the disk?

6 A. I can speculate.

7 Q. No, I don't want you to speculate. Do you  
8 know?

9 A. No, I don't know. I didn't know that he  
10 looked into this.

11 Q. And when somebody goes on your web site to  
12 look at whatever it is you're posting on your  
13 web site, there's a record of who was there  
14 and when they were there; is that correct?

15 A. Not that I know of.

16 Q. There's not? You know of no -- strike that.

17 You don't know that when somebody  
18 goes on a web site, you can see who was there  
19 and how many times somebody looks at your web  
20 site?

21 A. Again, this is stored. It is not necessarily  
22 a web site where I invite people to see it.  
23 The intent was never to have anyone look at  
24 that area or that directory. It's simply a  
25 place for me to put the photos. I'm not aware

1 of anything that allows someone to -- I mean,  
2 there may be, but it's beyond my knowledge.

3 Q. So you don't know how this information was  
4 taken off of your storage?

5 A. Oh, I know how it was taken off. That's not  
6 difficult to figure out.

7 Q. How is it taken off?

8 A. Someone got the address, whether they checked  
9 every single TuscoNet address to find this  
10 one, until they found what they were looking  
11 for. Maybe it was just a fishing expedition,  
12 but once you log on and click on the address,  
13 you can download it and save the pictures to  
14 your own disk.

15 Q. And Items 42 through 54 are items that you do  
16 offer for sale or trade on the Internet?

17 A. A good portion of them.

18 Q. And was this information on TuscoNet on 8/4/00  
19 when you met with the Chief and Safety  
20 Director?

21 A. I believe it was, yes.

22 Q. As a matter of fact, the Union Exhibit G that  
23 you offered into evidence here, all of the  
24 dates on Union Exhibit G predate August 4,  
25 2000, don't they?

1 A. Yes, they do.

2 Q. You testified that on 12/00 you purchased a  
3 small business in Massillon. Do you recall  
4 that testimony?

5 A. Yes, I did.

6 Q. And you testified that you have had no profits  
7 from that business?

8 A. That's correct.

9 Q. How have you supported yourself?

10 A. My deferred comp money. I was forced to take  
11 it out and use that to live on and pay for the  
12 business, in the meantime, since I was fired.

13 Q. How much deferred comp money did you pull out?

14 A. \$11,000 and some change.

15 MR. TSCHOLL: May I take a short  
16 break here, Mr. McIntosh?

17 THE ARBITRATOR: Sure.

18 (A brief recess was had.)

19 THE ARBITRATOR: Do you have further  
20 questions?

21 MR. TSCHOLL: Yes, I believe this  
22 is the last question.

23 BY MR. TSCHOLL:

24 Q. Mr. Cimperman, turn to page 7.

25 A. Yes.



1 Q. I'm going to ask you to take a look at what  
2 you wrote to Mr. Brinkley on July 27th. When  
3 you are done, if you would look up, please.

4 A. Okay.

5 Q. To a normal person who was reading this  
6 transmission, could they not conclude that you  
7 were doing this on behalf of the New  
8 Philadelphia Police Department?

9 A. Anyone can interpret it any number of ways. I  
10 was doing it for Roswell and Newcomerstown.  
11 That was my goal. That's what I was thinking  
12 when I typed it.

13 Q. You don't say "Roswell" or "Newcomerstown" in  
14 the body of this transmission, do you?

15 A. No, I don't.

16 Q. And my question is: Would not a normal person  
17 who was reading this, conclude that you were  
18 doing this as a Captain for the New  
19 Philadelphia Police Department?

20 A. It is possible.

21 Q. Well, anything is possible. Is it not  
22 probable that that would be the logical  
23 conclusion by any reader of this?

24 A. I don't know if I can say that.

25 Q. You can't say that?

1 A. I know what I was thinking when I typed this  
2 out. How the Chief interprets it, you or  
3 anyone else, I don't think I'm qualified to  
4 say how someone else would interpret it. I  
5 know what I was thinking when I typed it.

6 MR. TSCHOLL: I have no further  
7 questions.

8 THE ARBITRATOR: Any Redirect?

9 MR. PIOTROWSKI: Yeah.

10 FURTHER EXAMINATION

11 BY MR. PIOTROWSKI:

12 Q. Did the Chief ever ask you whether or not you  
13 used your position as a New Philadelphia  
14 Police Officer in Internet transactions?

15 A. No, he did not.

16 Q. He asked you whether or not you used your  
17 position as a New Philadelphia Police Officer  
18 in Internet radio sales, right?

19 A. Correct.

20 Q. Okay. And did you ever use your position as a  
21 New Philadelphia Police Officer in Internet  
22 radio sales?

23 A. No.

24 Q. Did you ever send page 41, or the digital file  
25 that comprises page 41, to anybody in the

1 course of an Internet radio sale?

2 THE ARBITRATOR: By the "digital  
3 file," you mean Union G?

4 MR. PIOTROWSKI: Well, I mean this is  
5 an image --

6 THE ARBITRATOR: Right, you said C-41  
7 or the digital file, I thought you said --

8 MR. PIOTROWSKI: Right.

9 THE ARBITRATOR: Are you referring to  
10 Union G?

11 MR. PIOTROWSKI: Well, Union G refers  
12 to the first one --

13 THE ARBITRATOR: I'm sorry. I  
14 shouldn't have interrupted your question.  
15 Please ask your question again. I apologize.  
16 BY MR. PIOTROWSKI:

17 Q. The photograph that is City Exhibit 41, that  
18 is a printout of a digital file; is it not?

19 A. Yes.

20 Q. Did you ever send that digital file to anyone  
21 in the course of an Internet radio sale?

22 A. No.

23 Q. Did you ever send it to anyone in the course  
24 of any Internet radio incident?

25 A. No.

1 Q. What did you have this on TuscoNet for?

2 A. It was a way of saving it and also allowing my  
3 mother and my sister, who were the two first  
4 people I allowed to get it.

5 Since it bulks up an Email and  
6 sometimes you have problems sending a larger  
7 file on an Email, I put it on the web page or  
8 site, or whatever terminology you want to give  
9 it, so that my mother and my sister could  
10 download it. I happen to like this particular  
11 photograph. I wanted my mother to have a copy  
12 of it who lives in New Mexico.

13 Q. Okay. By having Alan add user selectable scan  
14 channels to a portable radio, did it  
15 automatically then scan every available band?

16 A. No, it did not.

17 Q. Could Rocky have programmed it to scan two  
18 channels only?

19 A. Yes, he could.

20 Q. Three channels?

21 A. Yes.

22 Q. And if he had done so, would there still be  
23 the same danger that Kenny was talking about  
24 of overrunning another call?

25 A. No, it would have been the same probability as

1 the current scan system. What it allowed you  
2 to do was, if you wanted to swap one for  
3 another. As I've used in an earlier example,  
4 if there is a situation, which happens often,  
5 where you didn't need Dover, but you wanted  
6 the Park Police, you could swap the two.

7 So you still have the same number of  
8 channels, the same chances of having  
9 something, you know, not copying a  
10 transmission as you would at any other time  
11 with any other radio.

12 Q. And if you wanted to hear what the Park Police  
13 were doing with a nonmodified radio, what  
14 would you have to do?

15 A. You would have to switch to that channel,  
16 which gives you another channel to monitor,  
17 increasing the risk of missing something.

18 Q. So you would have to switch the radio to  
19 receive strictly calls on the Park Police  
20 channel?

21 A. Right.

22 Q. And instead of selecting two channels, one  
23 being your normal channel, the other being the  
24 Park Police?

25 A. Correct.

1 Q. Or could you add the Park Police to a  
2 three-channel scan which included Dover?

3 A. Yes, you could.

4 Q. Now, they keep referring to TuscoNet and your  
5 web site?

6 A. Yes.

7 Q. Was this web site ever listed on any of the  
8 major search engines?

9 A. Not that I'm aware of. I haven't seen it  
10 listed.

11 Q. Has it ever been?

12 A. On TuscoNet -- there's no search engine, but  
13 on TuscoNet it's got a listing of every single  
14 web page - at least I believe it's every  
15 single web page - that TuscoNet has, which  
16 includes the New Philadelphia Police web site  
17 and other Officers have some pages and that  
18 sort of thing. It's listed as "Dave."

19 I typed in my first name when I  
20 wanted a title when I first put my first  
21 picture up there, and that's all it was, but  
22 that's just on a listing of everything.

23 Q. Every web site on TuscoNet?

24 A. Right, but there's no search engine or other  
25 page that refers to it or nothing like that to

1 give anyone an idea of where it would be,  
2 unless, of course, someone was going on a  
3 fishing expedition and started looking at  
4 everything.

5 Q. So is that page or that directory listed as  
6 "Dave Cimperman, Captain New Philadelphia  
7 Police Department"?

8 A. No, it is not.

9 Q. Does it in any way identify you as a Police  
10 Officer?

11 A. No, there's actually no terminology  
12 whatsoever. The title of the page is "Dave,"  
13 my first name. That's simply it.

14 Q. Okay.

15 MR. PIOTROWSKI: I have no further  
16 questions.

17 MR. TSCHOLL: No.

18 THE ARBITRATOR: You have introduced  
19 as Exhibits: Union E, the partial shipping  
20 order and we've also introduced Union G, the  
21 TuscoNet. Do you wish to offer those into  
22 evidence?

23 MR. PIOTROWSKI: I do.

24 THE ARBITRATOR: Is there any  
25 objection to either?

1 MR. TSCHOLL: It's E?

2 THE ARBITRATOR: Yeah.

3 MR. TSCHOLL: No objection to E  
4 and what was the next one?

5 THE ARBITRATOR: G. They will be  
6 received.

7 (Union's Exhibits E and G were  
8 admitted into evidence.)

9 With that, do you rest?

10 MR. PIOTROWSKI: We need to have a  
11 stipulation or I need to call the Chief.

12 MR. TSCHOLL: Why don't you just  
13 call the Chief briefly and ask him about  
14 that.

15 MR. PIOTROWSKI: Okay.

16 THE ARBITRATOR: Chief, you've been  
17 previously sworn, you understand you're still  
18 under oath?

19 CHIEF STAGGERS: Yes.

20 FURTHER CROSS-EXAMINATION

21 BY MR. PIOTROWSKI:

22 Q. Chief, looking to City Exhibit 41 --

23 A. Okay.

24 Q. -- which is the printout of the electronic  
25 data file that constitutes this picture. Do



1           you know anybody who ever received this  
2           picture from Dave Cimperman?

3       A.    I've accessed this file.  I've seen this  
4           picture.

5       Q.    On TuscoNet?

6       A.    Yes, I don't know if he sent it to anybody,  
7           but that was after our hearing back before.

8       Q.    You went to TuscoNet?

9       A.    Yeah, when I got on my computer.

10      Q.    Okay.

11      A.    Went through just the process he said.

12      Q.    Went to?

13      A.    I went down to Ds.  There's Dave at TuscoNet.  
14           There's "Dave."  I clicked on "Dave."  I got  
15           that listing, this.  And if you click on these  
16           pictures, this comes up right down the line.  
17           (Indicating.)

18      Q.    Okay.  Now, had you not known Dave's file was  
19           on TuscoNet, how would you have gotten that?

20      A.    I would have gotten -- if I was checking every  
21           index in the Ds, you know, "D" for say, "Dan"  
22           before you get to "Dave," whatever, Dan, that  
23           would come up.  Then you go to the next person  
24           down until you get to "Dave" and you're going  
25           to get this.  (Indicating.)

1 Q. Okay. What evidence do you have that this  
2 picture has ever been used in the furtherance  
3 of Internet radio sales or Internet radio  
4 transactions?

5 A. I don't.

6 Q. So you have no knowledge as to whether or not  
7 this has ever been offered as evidence as Dave  
8 Cimperman as a Police Officer and, therefore,  
9 you should make a deal with him?

10 A. The only way that could possibly conceivably  
11 happen is if he was in his Internet  
12 transactions or dealings - whatever  
13 terminology you want to use - and he gave  
14 somebody that address, this address, and they  
15 started to click. And the first picture they  
16 click on is that ".jpg," then they're going to  
17 get his picture. Then they would know he's a  
18 Police Officer.

19 Q. Or that he dresses up like one?

20 A. Well, yeah, we've had people do that, too,  
21 so --

22 Q. But you don't have any evidence that that  
23 occurred?

24 A. There's no way I would know. I wouldn't know  
25 that.

1 Q. And on your investigation of the Ebay question  
2 with Mr. Ayers --

3 A. I didn't investigate that, but, go ahead.

4 Q. Okay. Did you come to any conclusion as to  
5 whether or not Captain Cimperman identified  
6 himself as a Police Officer with regards to  
7 Mr. Ayers?

8 A. The only thing I know about that is in the  
9 report that Officer Hootman sent. The man  
10 called here complaining about an individual by  
11 the name of Dave Cimperman. And the only Dave  
12 Cimperman I know in New Philadelphia is this  
13 man right here. (Indicating.)

14 Q. But did Hootman say that this Mr. Ayers knew  
15 Dave Cimperman was a cop or didn't know that  
16 Dave Cimperman was a cop?

17 A. I don't recall that he ever said.

18 MR. PIOTROWSKI: No further  
19 questions.

20 MR. TSCHOLL: I have no follow-up.

21 THE ARBITRATOR: Okay. Mr.  
22 Cimperman, I apologize, I had a couple  
23 questions.

24 You mentioned that you went to your  
25 attorney's office and he had the Ebay sales

1 info. By that, you meant these photographs?

2 MR. CIMPERMAN: No. No.

3 THE ARBITRATOR: What did you mean?

4 MR. CIMPERMAN: What I meant by that  
5 was the information that -- during  
6 Hootman's --

7 THE ARBITRATOR: Do we have any  
8 exhibits that you looked at that you're  
9 talking about when you made that --

10 MR. CIMPERMAN: I don't know. Give  
11 me a moment and I'll look, but I don't believe  
12 so.

13 THE ARBITRATOR: That's fine. I  
14 didn't need the exhibits.

15 MR. CIMPERMAN: What I was referring  
16 to was Hootman's investigation of his  
17 supervisor, me. There were some documents on  
18 that that indicated some of my past  
19 transactions.

20 THE ARBITRATOR: So these were not  
21 these photographs?

22 MR. CIMPERMAN: No. No. No.

23 THE ARBITRATOR: Could you receive on  
24 the New Philadelphia Police Department's  
25 channel when you're on the Sheriff's channel?

1 MR. CIMPERMAN: If you've got your  
2 radio in scan, you could with scan mode turned  
3 on. Scan mode was there all along. Simply  
4 turning it on and off. There is no priority.

5 THE ARBITRATOR: But there is no  
6 priority?

7 MR. CIMPERMAN: No, there never was  
8 a priority in the system.

9 THE ARBITRATOR: But the system  
10 always had, at least, the County and --

11 MR. CIMPERMAN: The channels are  
12 there. For instance, the County channel would  
13 be one of probably 30 different channels.  
14 Originally it was just New Philly Police 1 and  
15 then Dover Police 1 and the scan.

16 THE ARBITRATOR: Did my question  
17 participate any further questions from either  
18 of you?

19 MR. TSCHOLL: Not on behalf of the  
20 City.

21 MR. PIOTROWSKI: They did on my  
22 behalf.

23 Where are we on the exhibits?

24 THE ARBITRATOR: We're on " I."  
25 (Union's Exhibit I was

marked for identification.)

FURTHER EXAMINATION

BY MR. PIOTROWSKI:

Q. Mr. Cimperman, can you identify the document I've just handed you that has been identified as Union Exhibit I?

A. It's a copy of an Ebay page for sale.

Q. And what does that mean?

A. If you were to go on Ebay and either just look or do a search for any particular items, this is one of the items up for sale on Ebay.

Q. And this particular item, do you recognize it?

A. Yes, I do.

Q. And what is it?

A. It's a programming box and some related equipment that I put up for sale some time ago.

Q. Do you remember who bought this item?

A. There was -- I actually had several of these items, more than one. I picked them up in Dayton, I believe, where I bought four or five of them at one point, but I believe Mr. Ayers was the one that bought this particular item.

Q. It was sold for \$500.56?

A. Yes.

1 Q. Was that the price that Mr. Ayers paid?

2 A. I believe it was, plus shipping and handling,  
3 I believe.

4 Q. And this is the item you ultimately shipped to  
5 Mr. Ayers?

6 A. Yes, it is.

7 Q. Anywhere on that document do you identify  
8 yourself as a Police Officer?

9 A. No, I don't.

10 Q. And what is your screen name for this sale?

11 A. My last name.

12 Q. "Cimperman"?

13 A. Correct.

14 Q. Is there anywhere on this document that would  
15 hotlink them back to your picture on TuscoNet?

16 A. No, actually quite the opposite. If you take  
17 a look at the picture on the second page where  
18 it says PA-1, that at one point was a photo  
19 that was on the web page in Union G. It was  
20 deleted after the sales.

21 When you log on to the web site, the  
22 Ebay, this is all you see is the photograph,  
23 which is part of the sale. You don't see any  
24 of the other items listed in Union G.

25 (Union's Exhibit J was

1 marked for identification.)

2 Q. I'm going to hand you another document, which  
3 is identified as Union Exhibit J. Can you  
4 tell me what that document is?

5 A. That's another auction item on Ebay.

6 Q. And is this the same item that you sold to Mr.  
7 Ayers?

8 A. No, it's not.

9 Q. Do you know how it is different?

10 A. Well, there's a number of things different.  
11 As I stated a little bit ago, I bought a big  
12 package lot when I was in Dayton one year and  
13 there was four or five items. This is one.

14 There is a number of things that are  
15 not quite the same. I couldn't tell you off  
16 the top of my head, but there are -- it's not  
17 100 percent identical. It's the same basic  
18 item, but some of the other things are  
19 different.

20 Q. Is the list of all this stuff down there  
21 different on this one than it was on Union I?

22 A. Yes, it is.

23 Q. And why would that be true?

24 A. Because I broke up the large package into  
25 smaller sections when I started selling the



1 items and I didn't have the same amount of  
2 every item.

3 Q. Okay. So this was a radio interface box with  
4 software?

5 A. Yes, disks and some other stuff.

6 Q. Relating to all these names and numbers down  
7 at the bottom?

8 A. Right.

9 Q. So this one had less software than the one you  
10 sold to Mr. Ayers?

11 A. Correct.

12 Q. And anywhere on Union Exhibit J do you  
13 identify yourself as a Police Officer?

14 A. No, I don't.

15 Q. Is there any way that somebody from that page  
16 or from your Email address or whatever, could  
17 link back to TuscoNet and find out that you  
18 were a Police Officer?

19 A. No, not that I'm aware of.

20 Q. Did you sell others of these items?

21 A. Yes, I did.

22 Q. At any point when you were selling them, did  
23 you identify yourself as a Police Officer?

24 A. No, I did not.

25 MR. PIOTROWSKI: I have no further

1 questions.

2 THE ARBITRATOR: Any questions?

3 MR. TSCHOLL: None.

4 MR. PIOTROWSKI: I move for the  
5 introduction of Union I and J.

6 THE ARBITRATOR: Any objection?

7 MR. TSCHOLL: No objection.

8 THE ARBITRATOR: They will be  
9 received.

10 (Union's Exhibits I and J were  
11 admitted into evidence.)

12 THE ARBITRATOR: With that, do you  
13 rest?

14 MR. PIOTROWSKI: With that, I rest.

15 THE ARBITRATOR: Any further  
16 rebuttal?

17 MR. TSCHOLL: None.

18 THE ARBITRATOR: Okay. As I  
19 indicated to you, I'm going to be -- this is  
20 off the record.

21 (Discussion held off record.)

22 THE ARBITRATOR: We've been advised  
23 by the reporter that the transcripts will be  
24 available to the parties on or about the 8th  
25 of June. The briefs will be postmarked July

1 10th and the two copies of the briefs will be  
2 sent to my office and I will, thereupon,  
3 forward the parties copies to the opposing  
4 counsel.

5 I believe that's all. Is there  
6 anything else anybody can think of?

7 MR. TSCHOLL: I can't think of  
8 anything else.

9 MR. PIOTROWSKI: I have nothing  
10 further.

11 - - - - -  
12 (Proceedings concluded at 3:42 p.m.)  
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C E R T I F I C A T E

STATE OF OHIO,       )  
                              )       SS:  
STARK COUNTY,       )

I, Denise Lynn Pepper, a Computerized  
Stenotype Reporter and Notary Public within  
and for the State of Ohio, duly commissioned  
and qualified, do hereby certify that these  
proceedings were taken by me and reduced to  
Stenotypy, afterwards prepared and produced by  
means of Computer-Aided Transcription and that  
the foregoing is a true and correct  
transcription of the proceedings so taken as  
aforesaid.

I do further certify that these  
proceedings were taken at the time and place  
in the foregoing caption specified.

I do further certify that I am not a  
relative, counsel or attorney of either party,  
or otherwise interested in the event of this  
action.

IN WITNESS WHEREOF, I have hereunto  
set my hand and affixed my seal of office at  
Canton, Ohio on this 11th day of June, 2001.



Denise Lynn Pepper, Computerized  
Stenotype Reporter and Notary  
Public in and for the State of Ohio.

My commission expires November 29, 2005.

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[illegible]